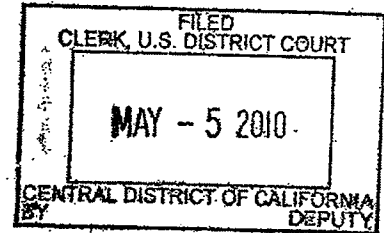


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Plaintiff

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILSON ARLINGTON COMPANY,
a California Limited Partnership,

Plaintiff,

vs.

HYATT CORPORATION, a Delaware
corporation, HYATT HOTELS
CORPORATION, a Delaware
corporation, and DOES 1 through 50,
inclusive,

Defendants.

CV10 3372 DSF (FFM)
CASE NO.

COMPLAINT FOR DAMAGES

1. BREACH OF CONTRACT
2. FRAUD/CONCEALMENT
3. BREACH OF FIDUCIARY DUTY
4. NEGLIGENT MISREPRESENTATION
5. ACCOUNTING

DEMAND FOR JURY TRIAL

Plaintiff, Wilson Arlington Company, hereby complains and alleges as follows:

GENERAL ALLEGATIONS

1. Wilson Arlington Company is a California limited partnership with its principal place of business in Los Angeles, California.

1 2. Hyatt Corporation and Hyatt Hotels Corporation (collectively
2 “Hyatt”) are Delaware corporations with their principal place of business in Chicago,
3 Illinois and are qualified to do business in the State of California.

4
5 3. Plaintiff is informed and believes and alleges upon such information
6 and belief that Defendant Hyatt has, at all times pertinent herein, been transacting
7 business throughout the State of California.

8
9 4. The exact names of capacities of Does 1-50 are unknown to
10 Plaintiff at this time. Amendment(s) to this complaint will be filed as the names and
11 capacities of said Doe Defendants become known.

12
13 5. Plaintiff is informed and believes and alleges upon such information
14 and belief that each and every Defendant, including the Doe Defendants was and is an
15 agent and/or employee, joint venturer, representative, principal of each and every other
16 Defendant in all of the acts complained of herein.

17
18 **JURISDICTION**

19
20 6. Jurisdiction is founded upon 28 U.S.C. § 1332(a). The amount in
21 controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of
22 interest and costs.

23
24 **VENUE**

25 7. Venue is proper in this Court pursuant to 18 U.S.C. Section 1965(a) and
26 28 U.S.C. Section 1391(a), in that Hyatt transacts business in Los Angeles, the
27 Management Agreement at issue was entered into in Los Angeles and many of the
28

obligations under breach of the Management Agreement were performed in Los Angeles. (A copy of the Management Agreement is attached as Exhibit 1.)

8. Plaintiff previously filed a breach of contract action against Hyatt Corporation on December 19, 2008 in Arlington County, Virginia, Case No. 08-1539.

9. On November 6, 2009, the Virginia Court ordered a non-suit of Plaintiff's claim pursuant to Virginia Code § 8.01-380. (Exh. 2, Court Order.)

FACTS

A. The Nature and Basis of This Lawsuit

10. This Complaint arises out of the wrongful acts committed by Hyatt in connection with its management of a hotel owned by Wilson Arlington and located at 1325 Wilson Boulevard, Arlington, Virginia, known as the Hyatt Arlington (the "Hotel"). At all times mentioned herein, Hyatt intentionally misrepresented the facts, produced false and misleading documentation to Plaintiff in California, withheld and concealed documentation and information from Plaintiff and/or otherwise acted with the intent to trick and/or deceive Plaintiff so as to prevent, and which did prevent, Plaintiff from discovering the true nature and extent of Hyatt's conduct which, in turn, prohibited and/or otherwise deterred the Plaintiff from filing his lawsuit against Hyatt. Said conduct by Hyatt included, but is not limited to, writing letters to Plaintiff to convince him that there were no accounting improprieties, sending the Plaintiff false audit reports at the corporate and hotel level, providing the Plaintiff with false business plans year after year, all for the purpose of concealing its misconduct and fraud and deterring the Plaintiff from filing suit. It was not until on or about June 11, 2008 that

1 designed to damage and deceive the Plaintiff, all of which obstructed the filing of this
2 action until the above concealment was discovered.

3
4 11. Hyatt managed the Hotel pursuant to the Management Agreement,
5 dated February 19, 1981. True and correct copies of the Management Agreement and
6 its Amendments are attached hereto as Exhibit 1, and are collectively referenced
7 hereinafter as the "Management Agreement."

8
9 12. When the Management Agreement was first executed, the Hotel was
10 owned by Prudential Insurance Company of America ("Prudential"). Hyatt managed
11 the Hotel as Prudential's agent, fiduciary, and trustee until March 1985, when Wilson
12 Arlington purchased the Hotel from Prudential. Wilson Arlington assumed all of the
13 rights and obligations under the Management Agreement. Wilson Arlington is also
14 referred to herein as the "Owner."

15
16 13. From that point until December 31, 2006, Hyatt managed the Hotel
17 as Wilson Arlington's agent, fiduciary, and trustee. Wilson Arlington sold the Hotel to
18 a third-party on December 31, 2006.

19
20 14. Pursuant to the Management Agreement, Hyatt agreed to serve as
21 the Owner's agent in the operation of the business of the Hotel; as a trustee in handling
22 and managing the Owner's funds and accounts in connection with the Hotel; and as a
23 fiduciary by virtue of the relationship of confidence created by, and trust reposed in
24 Hyatt under, the Management Agreement. In addition to the duties attendant to its roles
25 as the Owner's agent, trustee, and fiduciary, Hyatt also agreed to abide by the specific
26 duties and covenants set forth in the Management Agreement.

27 ///

28 ///

1 15. As set forth more fully herein, Hyatt materially breached the
2 Management Agreement, engaged in fraudulent activities and breached its duties as the
3 Owner's agent, trustee, and fiduciary, by among other things:

- 4 (a) engaging in undisclosed self-dealing transactions with its Affiliates;
5 (b) retaining and failing to disclose, account for, and remit to the Owner
6 all monies and other consideration given to Hyatt and/or its Affiliates
7 by vendors who supplied goods or services to the Hotel;
8 (c) improperly charging the Owner for Hyatt's corporate overhead and
9 overhead costs of Affiliates of Hyatt;
10 (d) improperly charging the Owner for expenses incurred in connection
11 with Hyatt-managed hotels located outside the United States;
12 (e) furnishing false and misleading financial statements for the Hotel to
13 the Owner for the purpose of preventing Plaintiff from discovering
14 the true facts about Hyatt's misconduct;
15 (f) failing to properly account for and return to the Owner the fees,
16 allowances, charges, commissions, bonuses, discounts, rebates,
17 profits and/or kickbacks paid to Hyatt and its Affiliates by virtue of
18 its management of the Hotel;
19 (g) providing false, inconsistent and misleading information to the
20 independent auditors reviewing the Hotel's books and records and
21 the auditors reviewing Hyatt's corporate financial statements;
22 (h) providing false, inconsistent, and misleading information to the
23 Owner regarding Hyatt's dealings with its Affiliates and the actual
24 revenues and expenses associated with the Hotel;
25 (i) providing false and misleading information about the Hotel's capital
26 improvement needs, thereby damaging the Owner's ability to sell the
27 Hotel to a third-party;
28

- (j) retaining and failing to account for and remit to the Owner all of the intangible property, including customer information, that was created and collected by Hyatt in its capacity as Wilson Arlington's agent, fiduciary, and trustee; and
- (k) Deliberately withholding documentation from the Plaintiff for the purpose of preventing the Plaintiff from discovering Defendants' misconduct. Said documents were not discovered by the Plaintiff until on or about June 11, 2008, and more fully in June, 2009 when Hyatt was sanctioned \$100,000.00 and ordered by the Virginia Court to produce documents previously withheld and/or declared by Hyatt and its attorneys, not to exist at all. (*See* Exh. 3, Court Order.)

16. At all times, Hyatt was acting intentionally, knowingly, and in willful disregard of the rights of the Owner and its obligations under the Management Agreement for the purpose of tricking or deceiving Plaintiff so as to disguise Hyatt's misconduct and prevent Plaintiff from learning the true facts.

B. Hyatt's Role as Wilson Arlington's Agent, Trustee, and Fiduciary under the Management Agreement

17. Pursuant to the Management Agreement, Hyatt agreed to manage the Hotel for the account of the Owner and to manage the Hotel in accordance with the terms of the Agreement. (Management Agreement at 2 & § 3.1(a).)

18. The Management Agreement gave Hyatt extensive authority as the Owner's agent, trustee, and fiduciary. At all times relevant to this Complaint, Hyatt held itself out as the Owner's agent, trustee, and fiduciary, and purported to act as the Owner's agent, trustee, and fiduciary.

1 19. The Management Agreement provided that Hyatt's management and
2 operation of the Hotel "shall include and extend to, among others, the operation of the
3 Hotel for all activities which are customary and usual to a hotel business; the charges
4 to be made for rooms and commercial space other than space leased to concessionaires,
5 for entertainment and amusement, and for food and beverages; the labor policies of the
6 Hotel (including wage rates, the hiring and discharging of employees, and the
7 installation of employee retirement and other benefit plans . . .); and all phases of
8 promotion and publicity." (Management Agreement, § 3.1.)
9

10 20. Section 3.1 of the Management Agreement specifically authorized Hyatt
11 to negotiate and enter into such reasonable contracts as agent for Owner as may be
12 necessary or advisable in connection with operation of the Hotel, subject to Owner's
13 written approval of three categories of contracts: (1) contracts having a term of greater
14 than one year; (2) contracts binding the Owner for more than \$10,000; and (3) contracts
15 with corporations or persons controlling, controlled by, under the common control of,
16 or affiliated with Hyatt ("Affiliates").
17

18 21. Under the Management Agreement, Hyatt also agreed to act as the
19 Owner's trustee and fiduciary in managing and handling the Owner's funds. Hyatt
20 possessed and controlled the books and records for the Hotel. Hyatt also directly
21 controlled the preparation, generation, and transmission of the financial statements for
22 the Hotel to the Owner.
23

24 22. As the Owner's trustee and fiduciary, Hyatt had the authority, under the
25 Management Agreement, to establish and manage Operating Accounts which would
26 hold all monies advanced by Wilson Arlington as working capital for the operation of
27 the Hotel and all monies received by Hyatt on the Owner's account from the operation
28 of the Hotel. The Management Agreement specifically directed Hyatt to hold all funds

1 in the operating accounts in trust for the Owner, and provided specifically that the bank
2 or banks holding the accounts were to be so instructed in writing.

3
4 23. As the Owner's trustee, Hyatt had the authority under the Management
5 Agreement to reimburse itself out of the operating accounts for only those costs and
6 expenses that it incurred in connection with the operating of the Hotel.

7
8 24. As another example of the relationship of trust contemplated and created
9 by the Management Agreement, Section 5.1 authorized Hyatt to establish and manage
10 a Reserve Account for the purchase of Furnishings and Equipment, and for
11 expenditures for certain capital improvements. The Management Agreement stated that
12 the monies in the Reserve Account were "the property of Owner," and required Hyatt
13 to maintain the account as a fiduciary "in trust for Owner."

14
15 25. By virtue of the relationship of trust and confidence created by the
16 Management Agreement, Hyatt owed strict fiduciary duties to Wilson Arlington,
17 including the duties of care and loyalty. Hyatt was obligated to act in the best interests
18 of Wilson Arlington and not to engage in self-dealing to the detriment of Wilson
19 Arlington.

20
21 26. In addition to its strict fiduciary duties to the Owner, Hyatt also had a duty
22 to comply with the specific covenants set forth in the Management Agreement that
23 dictated the manner in which Hyatt's obligations would be performed.

24
25 27. For example, the Management Agreement specifically required Hyatt to
26 permanently keep "complete, accurate and separate books of account and other records
27 reflecting the results of the operation of the Hotel" and to keep such books and records
28 "in all material respects in accordance with generally accepted accounting principles

1 consistently applied.” (Management Agreement, § 7.4.) Within 20 days after the end
2 of each calendar month, Hyatt was required to deliver to the Owner an unaudited
3 financial statement prepared from the books maintained by Hyatt which included a
4 statement of current assets and liabilities, a profit and loss statement, the Hotel’s gross
5 receipts, and a comparison of actual income and expenses to forecast income and
6 expenses. (*Id.*)

7
8 28. The Management Agreement specified various reports that Hyatt was
9 required to provide to the Owner, such as schedules for compensation and bonuses for
10 executive Hotel staff, statements supporting the charges assessed by Hyatt for Chain
11 Expenses (as explained in further detail below), annual budgets, capital budgets, and
12 marketing plans, and financial statements.

13
14 29. As another example, the Management Agreement also specified the
15 transactions for which Hyatt was required to obtain the Owner’s written approval for
16 contracts whose term exceeded more than one year, which bound the Owner for any
17 amount in excess of \$10,000, or which involved “a corporation or a person or persons
18 controlling, controlled by, under common control of, or affiliated with Hyatt”
19 (“Affiliates”). (*Id.*, § 3.1.)

20
21 30. In compensation for its services as the Owner’s agent, trustee, and
22 fiduciary, Hyatt was paid an Annual Management Fee to operate the Hotel, as provided
23 in Section 4.2 of the Management Agreement. The Annual Management Fee was based,
24 in part, on the profitability of the Hotel, which allowed Hyatt to benefit from
25 improvements and increases in the Hotel’s profitability.

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1 31. The Management Fee was the only compensation that Hyatt was entitled
2 to receive for its services as the Owner's agent, trustee, and fiduciary under the
3 Management Agreement.

4
5 32. Over the term of Hyatt's management of the Hotel, Hyatt collected more
6 than \$13 million in Annual Management Fees from the Owner.

7
8 **C. Hyatt's Obligation to Provide Chain Services in Connection with the**
9 **Operation of the Hotel Without Profit to Hyatt**

10
11 33. Under Section 7.2 of the Management Agreement, Hyatt promised to
12 provide, or to cause its Affiliates, to provide "Chain Services" in connection with the
13 operation of and for the benefit of the Hotel. Chain Services are those benefits,
14 services, and facilities that Hyatt or its Affiliates generally make available to all hotels
15 operated by Hyatt or its Affiliates under the Hyatt brand name.

16
17 34. Section 7.2 identified the types of Chain Services provided by Hyatt and
18 its Affiliates at the time. These included: (1) convention business and sales promotion
19 services; (2) advertising, publicity and public relations services; (3) food and beverage,
20 personnel and other operational departmental supervision and control services; (4)
21 centralized reservations services in Omaha, Nebraska; and (5) making available
22 qualified personnel through the Hyatt employee training program.

23
24 35. The Management Agreement expressly prohibited Hyatt and its Affiliates
25 from making any profit in connection with the provision of Chain Services. Section 7.2
26 stated: "Neither Hyatt nor any of its affiliates shall charge or receive any profit in
27 respect of any such Chain Services."
28

1 36. "Chain Expense" was defined in the Management Agreement as a subset
2 of Chain Services. The Chain Expense for a given period was the cost incurred in that
3 period by Hyatt or its Affiliates in respect of Chain Services, "other than the costs of
4 food and beverage, personnel and other operational departmental supervision and
5 control services." (Management Agreement § 7.2 (emphasis added).) In other words,
6 by excluding those Chain Services from Chain Expense, the Management Agreement
7 expressly prohibited Hyatt from charging the Owner for the cost of services provided
8 by its food and beverage departments, its human
9 resources departments, operational departments, and the other departments that are part
10 of the services that Hyatt was required to provide in consideration for the Annual
11 Management Fee.

12
13 37. The Management Agreement also allowed Hyatt to pass on the costs of
14 only some Chain Expense to the Hotel, called "Allocable Chain Expense."

15
16 38. Section 7.2 defined "Allocable Chain Expense" as all Chain Expense
17 minus the cost of Chain Services furnished to hotels outside of the United States or
18 U.S. hotels that were not open to the public. The Hotel's pro rata share of the Allocable
19 Chain Expense was to be calculated on the basis of the ratio of the number of guest
20 rooms at the Hotel to the average number of guest rooms at all then-open hotels in the
21 United States operated by Hyatt or its Affiliates. (Management Agreement, § 7.2.)

22
23 39. Section 7.2 permitted Hyatt to reimburse itself out of the operating
24 accounts for only the Hotel's Allocable Chain Expense.

25
26 40. In addition to Hyatt's duties to maintain the Hotel's books and accounts
27 in accordance with generally accepted accounting principles and to prepare and furnish
28 financial statements to the Owner, Hyatt also had a specific obligation, under section

1 7.2 of the Management Agreement, to justify its Allocable Chain Expense to Wilson
2 Arlington by furnishing detailed statements with data supporting the charges.

3
4 41. During Wilson Arlington's ownership of the Hotel, the fees that Hyatt
5 billed to the hotels as Chain Expense grew astronomically. In 1989, the Chain Expense
6 claimed by Hyatt was approximately \$28.5 million. By 2005, the total Chain Expense
7 charged by Hyatt had ballooned to nearly \$60 million.

8
9 42. Over that time period, the number of hotels operated by Hyatt grew
10 tremendously. Because the Hotel's share of Chain Expense for any period was to be
11 calculated based on the ratio of the number of guest rooms at the Hotel to the average
12 number of guest rooms at all then-open hotels in the United States operated by Hyatt,
13 an increase in the number of Hyatt-operated hotels should have had the effect of
14 decreasing the Hotel's allocation of Chain Expense. Instead, the Chain Expense
15 allocated to the Hotel increased almost every year.

16
17 43. Hyatt paid itself more than \$4 million as Allocable Chain Expenses out
18 of the operating accounts that it managed on Wilson Arlington's behalf.

19
20 44. Over the course of the more than twenty years that Hyatt operated the
21 Hotel as Wilson Arlington's agent, trustee, and fiduciary, Hyatt routinely paid itself
22 Wilson Arlington's funds for costs that it billed as Allocable Chain Expenses, but that
23 Hyatt knew were not properly Allocable Chain Expenses under the Management
24 Agreement.

25
26 45. Hyatt also made secret profits from Chain Services and expenses billed to
27 Wilson Arlington and other Hyatt-branded hotels as Allocable Chain Expense, in
28 contravention of the express provisions of the Management Agreement.

1 46. Year after year, Hyatt concealed these improper charges from Wilson
2 Arlington. Hyatt perpetrated this concealment by setting up affiliated companies that
3 Hyatt used to funnel and disguise improper charges, preparing false and misleading
4 financial statements, providing false and misleading information to the auditor of the
5 Hotel's books and records, providing false and misleading information to the auditor
6 reviewing the financial statements pertaining to Hyatt's corporate chain wide programs
7 and practices, and causing Wilson Arlington to receive audited financial statements that
8 Hyatt knew to be false and misleading.

9
10 47. For example, knowing that the management agreements with Wilson
11 Arlington and other owners prohibited Hyatt from charging for overhead expenses
12 associated with Chain Services as Chain Expenses, Hyatt set up companies that it
13 controlled or that were under the common control of Hyatt and that would incur those
14 charges and then pass them on to Hyatt-managed hotels as Chain Expense.

15
16 48. Regency Systems Solutions ("RSS") is one such example. Because Hyatt
17 could not directly charge hotel owners like Wilson Arlington for the costs of building
18 or maintaining its computer system, Hyatt created RSS, which, on information and
19 belief, built and maintained Hyatt's computer system for reservations. No later than
20 1990, RSS, on information and belief, billed Hyatt's Omaha reservation center for
21 every expense associated with building, supporting, and maintaining Hyatt's computer
22 reservation system, including personnel and overhead expenses.

23
24 49. Hyatt, in turn, termed these expenses under the general category of
25 "Omaha reservations" and passed all of those costs on to Wilson Arlington and the
26 other owners of Hyatt-managed hotels as Chain Expense.

27 ///

28 ///

1 50. As another example, Hyatt set up a company called Randy Rezco. On
2 information and belief, Randy Rezco's sole purpose was to accumulate the costs of
3 developing a new reservation system for Hyatt. After the reservation system was built,
4 Randy Rezco billed another Hyatt Affiliate, Hyatt Tech Corporation, for those costs.
5 Hyatt Tech, in turn, billed those costs to Hyatt's Omaha reservation center, and Hyatt
6 passed those costs on to Wilson Arlington and other owners of Hyatt-managed hotels
7 as Chain Expense.

8
9 51. As yet another example, Hyatt, in 2001, built a data center at a price of
10 more than \$5 million. Hyatt charged the cost of the data center as Chain Expense,
11 without disclosing the nature or size of the transaction to the Owner.

12
13 52. In 2001, Hyatt also invested nearly \$4 million in Avendra LLC, a joint
14 venture that Hyatt formed with Marriott Corporation, and others. Hyatt billed its
15 investment in Avendra to the Owner as part of Chain Expense. Hyatt did not disclose
16 to the Owner that it had charged its investment in Avendra as part of Chain Expense.
17 Nor did Hyatt return to the Owner the sizeable payments that it has received by virtue
18 of Hyatt's investment in Avendra.

19
20 53. At no time did Hyatt disclose to Wilson Arlington that it was using "the
21 Omaha reservations" label to charge Wilson Arlington and other owners for operational
22 expenses, investments, and capital improvements that were expressly excluded from
23 Chain Expense under the Agreement. Nor did Hyatt disclose to or share with Wilson
24 Arlington the full extent of the payments it received or the profits it made in respect of
25 Chain Services.

26
27 54. On the contrary, Hyatt went to great lengths to conceal its contractual and
28 fiduciary breaches. It provided the Owner with financial statements that purported to

1 represent the Hotel's actual financial performance and that had been reviewed by
2 independent auditors. Those financial statements on their face betrayed no clue of the
3 falsehoods and material omissions on which they were based.

4
5 55. In fact, the most significant items on the Hotel's financial statements did
6 not even come from the records maintained at the Hotel—the records to which the
7 auditor of the Hotel's books was given access. Rather, those items—which included
8 the Hotel's allocated Chain Expense—came from Hyatt's corporate headquarters,
9 which transmitted the amounts, without back-up, to the Hyatt employees managing the
10 Hotel's day-to-day operations who simply plugged those amounts into the financial
11 statements they prepared for the Hotel.

12
13 56. Hyatt also represented that its corporate-level financial statements were
14 being independently audited, while it made material misrepresentations to, and
15 withheld material information from, the auditors who reviewed Hyatt's corporate-level
16 financial statements. Because they were based on Hyatt's material misrepresentations
17 and omissions, the auditors' reviews of Hyatt's corporate-level financial statements
18 were, in fact, meaningless.

19
20 57. Nonetheless, Hyatt incorporated the same false and misleading
21 information taken from its corporate-level financial statements into the financial
22 statements that it prepared for the Hotel. These included such things as the Hotel's
23 share of Allocable Chain Expense, the Gold Passport fees assessed to the Hotel, and
24 disclosures (or, more accurately, non-disclosures) of Hyatt's related-party transactions.
25 The auditors reviewing the Hotel's financial statements relied upon Hyatt's
26 corporate-level financial statements in their review, and opined that the Hotel's
27 financial statements complied with the Management Agreement. As a result, the Owner
28

1 received false and misleading financial statements that were intended to, and did,
2 conceal Hyatt's misdeeds.

3
4 58. Among the things that Hyatt concealed from the auditors was the true
5 nature of the items being billed to Wilson Arlington as Chain Expense.

6
7 59. For example, Hyatt did not disclose to the auditor reviewing Hyatt's
8 corporate-level financial statements the number, extent, and nature of the related-party
9 transactions in which Hyatt had engaged that directly affected the amounts that Hyatt
10 charged to the Hotel as Chain Expense.

11
12 60. Hyatt also directly misrepresented to the auditors reviewing Hyatt's
13 corporate-level financial statements what Chain Services it was permitted to charge the
14 owners of Hyatt-managed hotels as Chain Expense.

15
16 61. Since at least 2002, Hyatt knowingly misrepresented to the auditor that all
17 of the management agreements between Hyatt and hotel owners contained a "standard"
18 definition of Chain Expense. Hyatt further misrepresented to the auditor that all of the
19 management agreements allowed Hyatt to charge hotel owners for the direct costs of
20 providing any Chain Service, including any personnel and overhead costs, such as
21 occupancy costs, costs of equipment leases and capital improvements, and amortization
22 of capital costs.

23
24 62. This misrepresentation was made knowingly and intentionally because
25 Hyatt knew that it did not have the same management agreement with every owner. In
26 fact, the Management Agreement between Hyatt and Wilson Arlington expressly
27 prohibited Hyatt from charging for personnel and overhead as Chain Expense.

28

1 63. Hyatt also knowingly misrepresented to the auditor reviewing Hyatt's
2 schedule of Chain Expenses that all of its management agreements with owners
3 obligated Hyatt to deduct from Chain Expense charges only those amounts to which
4 Hyatt and its Affiliates were entitled to receive from hotels outside the United States,
5 Canada, and the Caribbean or for any hotel located in the United States, Canada, or the
6 Caribbean that was not open to the public. In other words, Hyatt told the auditor that
7 all of its management agreements allowed Hyatt to allocate among owners expenses
8 for hotels located in Canada and the Caribbean, as well as the United States.

9
10 64. In fact, Hyatt's Management Agreement with Wilson Arlington permitted
11 Hyatt to allocate to Wilson Arlington the expenses associated with Hyatt-managed
12 hotels located only in the United States, and not including hotels in Canada or the
13 Caribbean. The Management Agreement required Hyatt to deduct from Chain Expense
14 any amounts payable to Hyatt from hotels outside the United States.

15
16 65. Hyatt did not disclose to Wilson Arlington that it had falsely informed the
17 auditor that all management agreements were standard, and had intentionally caused
18 the auditors to test Hyatt's Chain Expense against contracts that were materially
19 different than its Management Agreement with Wilson Arlington.

20
21 66. Hyatt also caused the Owner to receive financial statements that the
22 auditor stated complied with the terms of the Management Agreement. Hyatt prepared
23 financial statements for the Hotel that included Chain Expense allocations that were
24 false, inaccurate, and misleading.

25
26 67. Hyatt also failed to provide Wilson Arlington copies of the Chain Expense
27 audit reports as they were issued.

28

1 68. Even when Hyatt did provide the Chain Expense audit reports to Wilson
2 Arlington, years after the fact, they were false, misleading, and incomplete.

3
4 69. The Chain Expense audit report for 2000 and 2001, for example, stated,
5 in circular fashion, only that the schedules contained therein represented the total
6 expenses incurred by Hyatt and its Affiliates “for Chain Expense, as defined,” without
7 stating what that definition was. The Chain Expense audit report also stated expressly
8 that the schedules contained therein were “not intended to be a presentation in
9 conformity with accounting principles generally accepted in the United States of
10 America.” The report used only broad categories such as “telephone” and “other
11 expenses, net” and did not explain all the overhead costs that Hyatt and its Affiliates
12 were, in fact, charging as Chain Expense.

13
14 70. Nor did Hyatt ever disclose to the Owner that the scope of the auditors’
15 engagement essentially was limited to reviewing the accuracy of Hyatt’s arithmetic.
16 The auditors were not asked to, and did not opine on, the fairness of Hyatt’s allocation
17 methodology or whether the expenses that Hyatt allocated to the Hotel as Chain
18 Expense had, in fact, been incurred in connection with the provision of chain services
19 for which Hyatt was permitted to charge the Owner.

20
21 71. To date, Hyatt has failed to adequately explain the more than \$4 million
22 that it collected from Wilson Arlington’s funds as Allocable Chain Expense.

23 ///

24 ///

25 ///

26 ///

27 ///

28

D. Hyatt's Secret Kickback Schemes and Arrangements with Vendors Who Supplied the Hotel

72. Under the Management Agreement and as the Owner's agent and fiduciary, Hyatt had a duty to enter into contracts that were fair and fully competitive, and that did not benefit Hyatt or its Affiliates at the expense of the Owner.

73. The Management Agreement also expressly required Hyatt to obtain the Owner's written approval for contracts with a term greater than one year (including renewals), and contracts with any person or entity controlling, controlled by, under the common control of, or affiliated with Hyatt.

74. Even though the Management Agreement limited Hyatt's compensation to the Annual Management Fee, and even though Hyatt was paid more than \$13 million in Annual Management Fees, Hyatt received and kept additional monies and payments from the operation of the Hotel. In violation of Hyatt's duties to the Owner, Hyatt routinely and secretly benefitted at the Owner's expense and retained monies attributable to the operation of the Hotel that rightfully belonged to the Owner.

75. Purporting to act on behalf of the Owner, Hyatt negotiated and entered into contracts with vendors for the purchase of goods and services for which Hyatt and/or its Affiliates received kickbacks from the vendors. In order to hide them from the Owner, Hyatt disguised the kickbacks in a number of ways, using such subterfuges as calling them allowances, charges, commissions, bonuses, discounts, rebates, and sponsorships.

76. Hyatt intentionally concealed the existence, amount, and extent of these kickbacks from the Owner.

1 77. Even though the kickbacks derived from the operation of the Hotel and
2 rightfully belonged to the Owner, Hyatt and/or its Affiliates secretly retained the
3 kickbacks.

4
5 78. Hyatt prepared false and fraudulent financial statements, which failed to
6 disclose the existence and/or extent of the kickbacks paid to Hyatt and/or its Affiliates
7 by virtue of Hyatt's operation of the Hotel.

8
9 79. Hyatt, on information and belief, knowingly withheld information, misled,
10 and/or misrepresented to the auditors reviewing the Hotel-level financial statements
11 and the Hyatt corporate-level financial statements the existence, extent, and nature of
12 the kickbacks received by Hyatt and/or its Affiliates from vendors who supplied goods
13 and services to the Hotel.

14
15 80. Hyatt also intentionally disseminated false and misleading information to
16 the Owner in its "Annual Business Plans." Though Hyatt touted the Annual Business
17 Plans to owners as disclosure documents, it actually used the documents to provide
18 misleading, incomplete, and at times even false, information to the Owner about such
19 material subjects as the relationships between Hyatt and its vendors, the terms of the
20 agreements with vendors, the existence and amount of rebates paid by vendors, how
21 those rebates were applied by Hyatt, and the competitiveness of the prices charged by
22 Hyatt's Affiliates and third parties.

23
24 81. One example of Hyatt's secret kickback arrangements with vendors is
25 Hyatt's arrangement with AT&T. Beginning no later than 1988, and through the
26 termination of the Management Agreement on December 31, 2006, Hyatt received
27 rebates, commissions, and other kickbacks from AT&T, by virtue of the operation of
28 the Hotel.

1 82. One such agreement was Hyatt's "zero-plus" dialing agreement with
2 AT&T. From 1989 through approximately March 1991, Hyatt and AT&T were parties
3 to an agreement pursuant to which AT&T paid Hyatt a commission for every zero-plus
4 call that was made by a Hyatt-brand hotel using AT&T. A zero-plus call is a call
5 initiated by a hotel guest who dials zero plus a number, is connected to an operator, and
6 then, through a credit card, third-party billing or collect call, uses whatever long
7 distance service the hotel has chosen.

8
9 83. Pursuant to this zero-plus agreement, Hyatt received a commission of
10 \$0.20 per zero-plus call. In 1989, Hyatt received more than \$1 million in commissions
11 pursuant to this agreement. In 1990, Hyatt received more than \$1.2 million in
12 commissions from AT&T under this zero-plus agreement. Hyatt retained these
13 commissions in their entirety, returning none of these monies to the hotels that it
14 managed.

15
16 84. Hyatt never disclosed its receipt and retention of these commissions to
17 Wilson Arlington. Nor did Hyatt seek or obtain Wilson Arlington's written approval
18 to enter into the zero-plus agreement, whose term exceed more than one year.

19
20 85. Hyatt and AT&T entered into a new zero-plus agreement in April 1991.
21 This agreement had a term of three years.

22
23 86. Once again, Hyatt did not seek or obtain Wilson Arlington's written
24 approval of the agreement.

25
26 87. In the new AT&T agreement, Hyatt represented that it was authorized to
27 receive commissions from AT&T with respect to all current Hyatt locations, which
28 included the Hyatt Arlington.

1 88. Hyatt received \$3 million in up-front commissions and bonuses upon
2 executing the April 1991 zero-plus agreement. Hyatt received this money as a \$720,000
3 signing bonus, plus advance commissions in the amount of \$2,280,000.

4
5 89. Hyatt retained the \$720,000 signing bonus in its entirety. Hyatt also
6 retained approximately \$380,000 of the advance commissions. In total, Hyatt retained
7 approximately \$1.1 million of the \$3 million it received from AT&T upon signing the
8 April 1991 agreement.

9
10 90. In subsequent years, beginning with 1992, Hyatt retained \$0.06 of each
11 \$0.38 per call commission that it received from AT&T. Hyatt estimated that it would
12 retain \$360,000 per year in commissions from AT&T in the second and third years of
13 the April 1991 zero-plus agreement.

14
15 91. In August 1991, Hyatt sent a memorandum to its general managers—who
16 were employees of Hyatt, and not the hotel owners—stating that Hyatt had recently
17 signed an agreement with AT&T to provide operator-assisted services that were to
18 include a competitive commission schedule.

19
20 92. Even that document did not mention that Hyatt had received and retained
21 commissions from 1989 through approximately March 1991 pursuant to an earlier
22 agreement with AT&T.

23
24 93. The August 1991 memorandum did not disclose that Hyatt had received
25 and retained a signing bonus from AT&T upon executing the April 1991 agreement.

1 94. The August 1991 memorandum did not disclose that Hyatt had received
2 advanced commission payments of \$2,280,000, and retained a significant portion of
3 those monies for itself.
4

5 95. The August 1991 memorandum also directly misstated the per call
6 commission amount as \$0.32 per call, despite the fact that the actual amount being paid
7 by AT&T to Hyatt was \$0.38. Hyatt did not disclose that it was retaining \$0.06 per call
8 for itself.
9

10 96. Hyatt took additional steps to prevent Wilson Arlington from discovering
11 that Hyatt was pocketing a portion of the AT&T commissions. Hyatt directed AT&T
12 to send the commission checks to Hyatt, rather than to the individual hotels, even
13 though it knew that AT&T was capable of sending individual commission checks to
14 each hotel. Hyatt instructed AT&T employees not to discuss the commissions with the
15 hotels, and to refer any inquiries from hotels regarding commissions to Hyatt.
16

17 97. Any argument that Hyatt retained a portion of these commissions to offset
18 expenses related to negotiating and implementing the April 1991 zero-plus agreement
19 is belied by the manner in which Hyatt recorded these commissions on its books. Hyatt
20 did not use the commissions it received from AT&T to offset the expenses of any of
21 its departments. Instead, Hyatt recorded the income it received from the zero-plus
22 commissions to an account known as the "Hyatt Corporation President's Office." That
23 was the same account used to pay the salaries of the members of the Pritzker family that
24 owned and ran Hyatt. On information and belief, the same account also was referred
25 to within Hyatt as "California Hyatt."
26

27 98. More than ten years after entering into the April 1991 agreement, Hyatt,
28 in response to pointed requests for information from Wilson Arlington, and after

1 having been sued by other owners, made some incomplete, misleading disclosures
2 regarding its kickback agreements with AT&T.

3
4 99. In late 2001, Hyatt revealed to Wilson Arlington some of the terms of its
5 April 1991 zero-plus agreement. Hyatt revealed that it had received \$3 million in a
6 signing bonus and up-front commissions, and that Hyatt retained \$0.06 per call through
7 March 1994.

8
9 100. But even then, Hyatt did not return the kickbacks that it had improperly
10 retained.

11
12 101. Nor did Hyatt disclose its receipt and retention of over \$2 million in
13 commissions from AT&T in 1989 and 1990.

14
15 102. Hyatt's actions in connection with its agreements with AT&T constitute
16 breaches of the Management Agreement. Hyatt received kickbacks from AT&T,
17 retained a significant portion of these monies for itself, and not only failed to disclose
18 the true nature of its AT&T agreements to Wilson Arlington, both misrepresented the
19 true facts and actively misled Wilson Arlington regarding material terms of these
20 agreements for the purpose of preventing Wilson Arlington from discovering the true
21 facts.

22
23 **E. Hyatt's Sham Company, MT Phone**

24
25 103. In early 1990, Hyatt created a shell company, known as MT Phone
26 Company ("MT Phone"), for the purpose of rebilling Hyatt-managed hotels for
27 telephone services at marked up prices.

1 104. MT Phone was created shortly after Hyatt entered into a rate agreement
2 with AT&T, known as the Tariff 12 Agreement.

3
4 105. For a period of one or two years, MT Phone had only one full-time
5 “employee.” After that, it had two full-time “employees,” one of whom was a clerical
6 assistant. Other Hyatt personnel were involved with MT Phone on a part-time basis.

7
8 106. MT Phone served as a vehicle through which Hyatt could rebill
9 Hyatt-managed hotels for telephone services at rates higher than those Hyatt had
10 negotiated with AT&T and memorialized in the Tariff 12 Agreement.

11
12 107. MT Phone did not have a contract with AT&T. AT&T entered into the
13 Tariff 12 Agreement with Hyatt. MT Phone was neither a party to, nor an assignee of,
14 that agreement. MT Phone did not even receive AT&T’s bills. Rather, those bills went
15 directly to Hyatt.

16
17 108. Nonetheless, Hyatt falsely and misleadingly described MT Phone as “an
18 entity created to establish credit with AT&T and act as a clearing house for all bills.”

19
20 109. From its inception in 1990 until 1994, MT Phone marked up the rates
21 provided to Hyatt-managed hotels by AT&T by 10%.

22
23 110. Beginning with November 1990 and continuing through December 2001,
24 MT Phone charged the Hotel on a monthly basis. In total, Hyatt charged the Hotel
25 \$457,950.42 through monthly MT Phone invoices during this time period.

26
27
28
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1 111. MT Phone's revenues were significant. At the end of MT Phone's first
2 fiscal year, January 31, 1992, MT Phone declared a dividend of \$1.8 million to its
3 parent corporation, HG Inc., another Hyatt Affiliate.

4
5 112. MT Phone declared another dividend of \$1.8 million on October 31, 1994.

6
7 113. In response to an inquiry from Wilson Arlington regarding MT Phone, in
8 July 1996, Hyatt stated that MT Phone was "an organization that was set up to
9 negotiate bulk long distance and data network agreements using the leverage of more
10 than 150 company wide locations to obtain the large quantity discounts for all facets
11 of network services used by Hyatt Hotels."

12
13 114. In fact, MT Phone did not "negotiate" anything; Hyatt did. And MT Phone
14 did not obtain "discounts" for "all facets of network services." On the contrary, MT
15 Phone only marked up the costs of the services rendered by AT&T.

16
17 115. After the owner of another Hyatt-managed hotel sued Hyatt, challenging
18 Hyatt's practices with respect to MT Phone, among other things, Hyatt formulated a
19 new description of MT Phone's function. Hyatt now claimed that MT Phone
20 "repackages" services provided by AT&T.

21
22 116. But Hyatt's so-called disclosure was false and misleading. Hyatt stated
23 that Hyatt-brand hotels "reimbursed" MT Phone for "[c]osts incurred" "without a profit
24 or mark-up component." The truth was the opposite: MT Phone was both making a
25 profit and charging a mark-up.

26
27 117. Further, Hyatt claimed that the "overall purposes of these services is to
28 reduce long distance expenses to each hotel and provide consistent, quality

1 telecommunication services to hotel guests.” This was also untrue. Hyatt executives
2 had already testified there was no real purpose to MT Phone other than to make a profit
3 for Hyatt.

4
5 118. In the Annual Business Plan for 2000, Hyatt again changed its tune
6 slightly. This time, Hyatt continued to assert that MT Phone did not charge the hotels
7 for a “profit component,” but no longer claimed that MT Phone did not charge a
8 “mark-up.”

9
10 119. By the time Hyatt provided its Annual Business Plan for 2000, Hyatt
11 dropped its claim that MT Phone’s purpose was to “reduce long distance expenses.”
12 But Hyatt still did not disclose MT Phone’s true purpose or its secret profits.

13
14 120. Nor did Hyatt disclose that other hotel owners had sued Hyatt in
15 connection with its MT Phone scam.

16
17 121. After Wilson Arlington’s repeated and pointed requests for information
18 about MT Phone, Hyatt told the Owner, in late 2001 and 2002, that MT Phone was
19 formed in order “to leverage volume commitments, resell its services to Hyatt and
20 non-Hyatt entities, troubleshoot for the hotels, provide quality network support, assist
21 with billing issues and/or disputes, conduct remote monitoring of the network and
22 provide the hotels with hospitality oriented telecommunications expertise.”

23
24 122. Those representations, again, were contrary to the testimony Hyatt’s own
25 executives had already given by that point, and which the Owner discovered on or
26 about June 11, 2008 and more fully in June 2009, that there was no particular reason
27 for the formation of MT Phone other than for Hyatt to make a profit.

28

1 123. Hyatt continued to insist in other communications sent to Wilson
2 Arlington that MT Phone “negotiates volume telecommunications agreements and
3 obtains favorable rates.” This description, again, was false.
4

5 124. Hyatt also continued to insist, falsely, that the “costs incurred” by MT
6 Phone and “reimbursed” by the hotels did not include a “profit component.”
7

8 125. On January 8, 2002, Hyatt sent a memorandum to its Controllers,
9 summarily informing them that MT Phone Company would shortly be dissolved. Hyatt
10 stated that each hotel would be billed individually and directly by AT&T beginning
11 with the January 2002 invoice. The hotels were further informed that they “should be
12 experiencing a sizable decline (25-35%) in their telecommunication costs (2001 versus
13 2000) based on Hyatt’s new Tariff-12 agreement.”
14

15 126. Hyatt did not disclose that a significant portion of the cost declines would
16 be the direct result of the discontinuation of Hyatt’s practice of using MT Phone as a
17 vehicle for marking up AT&T’s rates.
18

19 127. In response to Wilson Arlington’s continued requests for information
20 regarding MT Phone, Hyatt’s Senior Vice President of Operations, Chuck Floyd, sent
21 another letter, dated June 19, 2002, in which Hyatt significantly misrepresented MT
22 Phone’s financial position over the years. For example, the letter stated that “MT
23 Phone’s total net income (after taxes and including income from non-Hyatt customers
24 of MT Phone)” was \$1,186,114 for 1992. Hyatt’s statements were misleading and
25 intended to misrepresent MT Phone’s true finances and the benefits that Hyatt had
26 obtained through MT Phone. Nowhere did Hyatt disclose the \$1.8 million dividend that
27 MT Phone had declared to a Hyatt Affiliate for fiscal year 1992. Nor did Hyatt disclose
28

1 the \$1.8 million dividend that MT Phone had declared to a Hyatt Affiliate for fiscal
2 year 1994.

3
4 128. Hyatt's unauthorized transactions with an affiliated shell company to
5 receive and retain undisclosed payments from the mark-up and resale of telephone
6 services to the Hyatt Arlington constitutes a breach of the Management Agreement and
7 the fiduciary duties owed by Hyatt to Wilson Arlington.

8
9 **F. Hyatt's Receipt of Kickbacks through its Affiliate, Rosemont**

10
11 129. As the Owner's fiduciary and agent, Hyatt had a duty not to engage in
12 self-dealing and not to benefit itself at the expense of the Owner. Indeed, the
13 Management Agreement expressly provided that Hyatt could not, without the Owner's
14 written approval, enter into any contracts with "a corporation or a person or persons
15 controlling, controlled by, under common control of, or affiliated with Hyatt."
16 (Management Agreement, § 3.1(a).)

17
18 130. The Management Agreement provided only a single exception to this strict
19 limitation. Under Section 3.1(a), Hyatt could contract with or otherwise appoint its
20 affiliate, Rosemont Purchasing Company ("Rosemont"), to act as a purchasing agent
21 for the Hotel, and to pay Rosemont a fee or fees for its services, provided that prices
22 obtained through Rosemont were competitive and fair and the fee or fees paid to
23 Rosemont were "no greater than those charged by Rosemont for comparable services
24 performed for unaffiliated third parties." (Management Agreement, § 3.1(a).)

25
26 131. The Management Agreement specifically required Hyatt to make available
27 to the Hotel the same Chain Services provided by Hyatt and its Affiliates to other
28 Hyatt-managed hotels. Chain Services was defined in the Management Agreement as

1 including "food and beverage" services. The Management Agreement also specifically
2 prohibited Hyatt and its Affiliates from making any profit in respect of such Chain
3 Services.

4
5 132. In breach of these duties, and in breach of its fiduciary obligations to the
6 Owner, Hyatt, both directly and indirectly through Rosemont, received and retained
7 undisclosed kickbacks from food and beverage vendors who supplied the Hotel.

8
9 133. Hyatt was able to obtain these lucrative arrangements with vendors by
10 negotiating so-called "national" contracts through which Hyatt, purporting to act as the
11 agent on behalf of the owners of Hyatt-managed hotels, promised that the vendors'
12 products or services would be purchased for and used in Hyatt-managed hotels. In
13 exchange, the vendors would pay kickbacks that were paid directly to Hyatt or its
14 Affiliates, and not to the owners of the Hyatt-managed hotels.

15
16 134. These national agreements were negotiated and executed by Hyatt and
17 Rosemont without regard for the best interest of the owners of the Hyatt-managed
18 hotels, including Wilson Arlington. By mandating participation by all Hyatt-managed
19 hotels in these national contracts, Hyatt maximized the kickbacks received by its own
20 Affiliate, Rosemont, regardless of whether the vendors' products and services best
21 served the needs and interests of the Hotel.

22
23 135. On information and belief, these kickback arrangements also inflated the
24 prices charged by the vendors to the Hotels, and Hyatt's interest in maximizing its own
25 kickbacks conflicted directly with its contractual and fiduciary duty to obtain the
26 vendors' goods and services at the lowest possible prices.

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1 136. Hyatt intentionally did not share these national contracts or the terms of
2 the agreements with the Owner.

3
4 137. Even though the Management Agreement expressly required Hyatt to keep
5 copies of all contracts that it entered into on behalf of the Owner on file at the Hotel,
6 Hyatt intentionally did not do so.

7
8 138. Hyatt did not share all the national contracts with even the Hyatt
9 employees managing the day-to-day operations of the Hotel. The onsite managers were
10 provided with and asked to execute addenda that merely referenced and incorporated
11 the "master" national agreement, sight unseen.

12
13 139. Even when the Owner specifically inquired about the existence and terms
14 of Hyatt's and Rosemont's national agreements, and asked for copies of the national
15 contracts, Hyatt refused to disclose their terms and refused to provide copies of the
16 agreements themselves.

17
18 140. In just the six-year period between 1987 and 1993, the kickbacks received
19 by Hyatt and/or Rosemont from food and beverage vendors alone grew from
20 approximately \$200,000 to more than \$2 million.

21
22 141. On information and belief, this rapid growth in kickback amounts was
23 achieved at the expense of the owners of the hotels managed by Hyatt, including
24 Wilson Arlington.

25
26 142. For years, Hyatt did not breathe a word about the existence of any rebates
27 or other kickbacks to the Owner. In 1999, after being sued by the owners of other
28 Hyatt-managed hotels on the basis of its secret kickback arrangements with vendors,

1 among other things, Hyatt sent the Owner a 239-page Annual Business Plan in which
2 it buried a brief, incomplete, and misleading discussion of Rosemont and Hyatt's
3 National Contracts program. Hyatt stated, falsely, that Hyatt received "no fee,
4 commission, or other remuneration" in connection with its National Contracts Program.
5 Hyatt also stated that Rosemont, however, "may receive fees, commissions, or rebates
6 on certain goods so provided (which includes a profit component)."
7

8 143. Hyatt included the same incomplete and misleading statements in its
9 Annual Business Plan for 2000.
10

11 144. Nowhere did Hyatt disclose the extent or amount of the kickbacks received
12 by Rosemont. Nor did Hyatt disclose that the profits made by Rosemont effectively
13 went into Hyatt's own pocket, inasmuch as Rosemont was controlled by Hyatt.
14

15 145. On multiple occasions in 2001 and 2002, Wilson Arlington inquired
16 specifically about the extent and amount of rebates and other kickbacks received by
17 Rosemont.
18

19 146. Once again, Hyatt provided information that was incomplete, inaccurate,
20 and intentionally misleading, the purpose of which was to trick and deceive Plaintiff
21 in order to prevent Plaintiff from discovering the true facts and which in fact did
22 prevent Plaintiff from knowing of Hyatt's misconduct. For example, Hyatt told Wilson
23 Arlington that Rosemont received rebates and commissions for "only a small
24 percentage of those items for which Rosemont arranged beneficial pricing."
25

26 147. On information and belief, kickbacks and rebates were fairly common and
27 routine in the national agreements negotiated by Hyatt and Rosemont.
28

1 148. Hyatt also told Wilson Arlington that Rosemont retained the rebates and
2 commissions paid by vendors "in lieu of charging a contractually permissible
3 purchasing fee as set forth in section 3.1 of the Hotel's Management Agreement."

4 149. While the Agreement permitted Rosemont to charge a fee for its
5 purchasing services, nothing in the Agreement permitted Rosemont to unilaterally opt
6 to obtain and retain undisclosed amounts of kickbacks from vendors in lieu of charging
7 such a fee.

8
9 150. Hyatt also said that Rosemont charged percentage purchasing fees on
10 purchases of operating equipment, supplies, and furniture, fixtures, and equipment
11 ("FF&E") for which, according to Hyatt, Rosemont received no rebates or
12 commissions.

13
14 151. That statement, too, was false and misleading. On information and belief,
15 Rosemont both charged the Owner a purchasing fee and received kickbacks from the
16 vendors who sold FF&E to the Hotel.

17
18 152. Not only did Hyatt mislead and conceal the extent of its kickback schemes
19 from the Owner, it also actively misled and concealed that information from the
20 auditor.

21
22 153. In 1994, for example, during the course of an audit of Hyatt's financial
23 records, Coopers & Lybrand discovered that Rosemont had received rebates from
24 vendors selling goods and services to Hyatt-managed hotels. Even though Rosemont
25 has been receiving rebates since at least 1987, Hyatt told the auditor that the rebate
26 income was a new source of revenue that Rosemont had just started to receive in 1993.

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154. The auditor observed that, contrary to Hyatt's practices to that point, because the individual hotels pay for the products and services purchased through Rosemont, any rebates should be returned to the hotels.

155. Nevertheless, Hyatt did not return the rebates to the individual hotels. Rather, Hyatt simply credited a fraction of the kickbacks received by Rosemont in 1993 and 1994 against Chain Expense, which again principally benefitted Hyatt.

156. Through the termination of the Management Agreement on December 31, 2006, Hyatt continued to receive rebates from vendors, including Pepsi and Pegasus Solutions, that were attributable to the operation of the Hotel and that were not returned to the Owner.

157. To date, Hyatt has not accounted for, explained, or returned to Wilson Arlington all the kickbacks that were received by Hyatt, Rosemont, and other Affiliates from the operation of the Hotel.

G. Hyatt's Self-Dealing and Contractual Breaches through Avendra

158. In October 2000, Hyatt, together with Marriott Corporation formed a new procurement services company, Avendra LLC ("Avendra").

159. Rosemont, Hyatt's purchasing arm, and Marriott's purchasing companies were merged into Avendra. On information and belief, Avendra was the successor in interest to Rosemont and assumed all of Rosemont's rights and obligations under Rosemont's national and other agreements with vendors. Avendra succeeded to all the kickback arrangements and deals that Hyatt had arranged through Rosemont, and

1 received the payments that would have gone to Rosemont under those preexisting
2 arrangements.

3
4 160. Hyatt also made a separate cash investment in Avendra. Hyatt charged that
5 investment to Chain Expense, thereby spreading the cost of that investment among the
6 owners of Hyatt-managed hotels, including Wilson Arlington.

7
8 161. In exchange, Hyatt received an approximately 18% ownership stake in
9 Avendra. Hyatt executives also serve on Avendra's Board of Managers.

10
11 162. In early 2001, Hyatt entered into a three-year Procurement Services
12 Agreement ("PSA") with Avendra, pursuant to which Hyatt appointed Avendra as the
13 sole purchasing agent for all hotels managed by Hyatt, including the Owner's Hotel.

14
15 163. In the PSA, Hyatt also committed to maximize each Hyatt-managed hotel's
16 purchases through Avendra.

17
18 164. Indeed, Hyatt closely monitored each hotel's Avendra "spend" and
19 actively encouraged the onsite managers at Hyatt-managed hotels, including the
20 Owner's Hotel, to direct as much as possible of their purchasing through Avendra.

21
22 165. Hyatt claimed that Avendra would save the owners of Hyatt-managed
23 hotels money by obtaining greater discounts for the products and services purchased
24 for the operation of the hotels. But Hyatt intentionally failed to provide the hotel
25 owners any way to test those claims.

26
27 166. On information and belief, Hyatt's claims of increased cost-savings
28 through Avendra purchasing are false and misleading because Avendra negotiates

1 kickbacks and other consideration for itself from vendors which inflates the prices that
2 the hotels are charged for goods and services purchased through Avendra.

3
4 167. Hyatt did not disclose the terms of its PSA to the Owner, even while Hyatt
5 had purported to enter into the PSA as the Owner's agent.

6
7 168. Nor did Hyatt disclose the terms of the agreements between Avendra and
8 the vendors who supplied goods and services to the Hotel, even though Hyatt was privy
9 to the terms of those agreements.

10
11 169. In 2004, Hyatt entered into another three-year PSA with Avendra on
12 similar terms.

13
14 170. Avendra was an overnight success for Hyatt. In 2001 alone, Hyatt used
15 Avendra for approximately \$122 million in procurement for the hotels that it managed.
16 During the term of the 2001 PSA, the Avendra "spend" of Hyatt-managed hotels
17 exceeded \$500 million.

18
19 171. Avendra received millions of dollars in kickbacks from vendors by virtue
20 of those expenditures. Only a tiny fraction of those kickbacks were returned to the
21 owners of Hyatt-managed hotels. If the kickbacks themselves were not enough,
22 Avendra charged the Hotel its own fees for its purchasing services, which were paid
23 out of the Owner's funds.

24
25 172. Hyatt meanwhile reaped double-profits from Avendra. Hyatt's ownership
26 stake in Avendra allowed Hyatt to financially benefit directly from Avendra's exploits.
27 Those profits were made at the expense of the Owner, and the owners of other
28 Hyatt-managed hotels.

1 173. Hyatt did not disclose to the Owner the financial rewards it reaped through
2 its investment in Avendra.

3
4 174. Even though Hyatt financed part of its investment on the backs of the hotel
5 owners, by charging the investment as Chain Expense, Hyatt did not give the Owner,
6 or the other hotel owners, their return on that investment. On the contrary, Hyatt
7 charged the Owner an additional fee for expenses that it claimed to have incurred in
8 managing its relationship with Avendra.

9
10 175. Hyatt also received additional compensation directly from Avendra in the
11 form of "sponsorship funds" and "marketing allowances." Hyatt kept those funds as
12 well for its own benefit.

13
14 176. Hyatt's PSAs with Avendra constitute fraud, express breaches of the
15 Management Agreement, and Hyatt's fiduciary obligations to the Owner.

16
17 177. Under the Management Agreement, Hyatt was permitted to appoint only
18 Rosemont as the purchasing agent for the Hotel. The Management Agreement further
19 required Wilson Arlington's written approval for any contracts with any company
20 affiliated with Hyatt.

21
22 178. Even though Avendra was an Affiliate of Hyatt, Hyatt did not seek or
23 obtain Wilson Arlington's written approval of its PSA.

24
25 179. The Management Agreement also required Hyatt to obtain written
26 approval from Wilson Arlington to enter into any contracts with a term longer than one
27 year.

28

1 180. Both the 2001 PSA and the 2004 PSA, however, had a term of three years.

2
3 181. Hyatt did not seek or obtain Wilson Arlington's written approval for either
4 PSA.

5
6 182. The PSAs also constituted self-dealing by Hyatt because Hyatt had a direct
7 stake in Avendra and because Hyatt's agreement with Avendra provided for payments
8 directly to Hyatt. Both gave Hyatt a strong incentive to funnel as much purchasing as
9 possible for the Hotel through Avendra, regardless of whether the prices that the Hotel
10 was being charged were the lowest prices possible or met the Owner's individual needs
11 and interests. And that is just what Hyatt did.

12
13 **H. Hyatt's Self-Dealing and Fiduciary Breaches through Gold Passport**

14
15 183. From 1987 through 2006, Hyatt charged the Owner a fee that it generally
16 referred to as a "Gold Passport" charge. Hyatt told the Owner that the charge related
17 to the expenses incurred by Hyatt in operating a customer loyalty program. Hyatt
18 claims that Gold Passport program members can use hotel stays to earn points that can
19 be redeemed for, among other things, future hotel stays.

20
21 184. For each point earned by a Gold Passport member during a hotel stay,
22 Hyatt charges a fee against the accounts of that hotel that is based on the hotel's "Gold
23 Passport-eligible revenue."

24
25 185. The fee has varied over time. From 1995 through at least December 31,
26 2006, Hyatt has assessed a fee equivalent to 4% of each hotel's Gold Passport-eligible
27 revenue.

1 186. These fees have yielded incredible amounts of money for Hyatt. Hyatt has
2 collected hundreds of millions of dollars from the accounts of Hyatt-managed hotels
3 under the name of Gold Passport. From the Hotel's accounts alone, Hyatt has collected
4 more than \$3 million in Gold Passport fees.

5
6 187. Hyatt claims that the "costs" of the Gold Passport program are paid with
7 Gold Passport fees. Hyatt, however, has never disclosed the amount or nature of those
8 so-called costs. Nor has Hyatt accounted to the Owner for the full amount of the Gold
9 Passport fees or how those fees relate to any benefit or service actually received by the
10 Owner.

11
12 188. Until late 2002, Hyatt even concealed the existence of a fund into which
13 the Gold Passport fees assessed by Hyatt are deposited (the "Gold Passport Fund"). At
14 that time, Hyatt sent the Owner a 200-plus page Annual Business Plan for 2003, in
15 which it stated, for the first time, that "[m]onies collected for Gold Passport are
16 deposited into an interest bearing segregated fund and various investments managed
17 by independent money managers. Actual costs of operating the program, including
18 marketing and award redemptions, are paid from the fund."

19
20 189. Hyatt did not disclose the balance of the Gold Passport Fund, which stood
21 in excess of \$200 million at that time.

22
23 190. Hyatt did not disclose what it considered to be the "actual costs" of the
24 Gold Passport program, or what it charged as such costs to the Gold Passport Fund.
25 Nor did it disclose that Hyatt, in fact, was using the assets of the Gold Passport Fund
26 to pay Hyatt's own general administrative, marketing, and operating costs.

1 191. Hyatt also did not disclose that Hyatt was holding itself out to the auditor
2 as the trustee of the Gold Passport Fund, and representing the Gold Passport Fund as
3 a fund held for the benefit of the Owner and other hotel owners, whose funds had been
4 paid into that fund.

5
6 192. In the same Annual Business Plan, Hyatt stated that the Gold Passport
7 Fund is audited annually by an “independent accounting firm.”

8
9 193. Hyatt did not disclose to the Owner that those “audits” were intentionally
10 narrow and limited essentially to confirming Hyatt’s arithmetic. In fact, the auditors
11 were not asked to, and did not, review the fairness or propriety of the amounts charged
12 to the Gold Passport Fund by Hyatt as operational costs.

13
14 194. On information and belief, Hyatt was using the Gold Passport Fund to
15 finance Hyatt’s own corporate overhead and expenses.

16
17 195. Hyatt also actively misled the auditor about the nature and use of the Gold
18 Passport Fund.

19
20 196. To justify Hyatt’s failure to consolidate the activities of the Gold Passport
21 Fund on its financial statements, Hyatt told the auditor reviewing Hyatt’s
22 corporate-level financial statements that the Gold Passport Fund was a constructive
23 trust held by Hyatt for the benefit of all the owners of Hyatt-managed hotels and that
24 each owner owned a proportionate share of the Gold Passport Fund.

25
26 197. Hyatt falsely told the auditor that Hyatt’s management agreements with
27 all owners expressly provided that the Gold Passport Fund assets would be segregated
28 and that each owner would own a proportionate share of the Gold Passport Fund.

1 198. Hyatt also told the auditor that Hyatt did not need to consolidate the Gold
2 Passport Fund's income on its own balance sheets because the hotel owners to whom
3 the assets in the Gold Passport Fund belonged reported the proportionate share of the
4 fund's value on their own tax returns.

5
6 199. Hyatt also told the auditor that, if the Gold Passport program were
7 discontinued, any excess cash would be returned to the hotels.

8
9 200. Hyatt's representations to the auditor were directly contrary to what it had
10 told and was continuing to tell the Owner. Hyatt told the Owner that the Gold Passport
11 Fund was managed for the benefit of the members of the Gold Passport Program, not
12 the hotel owners.

13
14 201. Hyatt further repeatedly rebuffed Wilson Arlington's efforts to obtain
15 information regarding the operation and funding of the Gold Passport program in order
16 to trick and deceive Plaintiff so that Plaintiff would be prevented from discovering the
17 true facts. Hyatt refused to permit Wilson Arlington access to the auditor whom Hyatt
18 claimed had blessed the Gold Passport fees charged by Hyatt.

19
20 202. When Wilson Arlington sold the Hotel to a third-party, effective
21 December 31, 2006, at least \$1.1 million of the funds in the Gold Passport Fund
22 belonged to Wilson Arlington.

23
24 203. Hyatt, however, refused to return those funds to Wilson Arlington or to
25 explain its retention of the funds.

1 204. Hyatt violated the Management Agreement and its fiduciary duties to
2 Wilson Arlington in its assessment and retention of Gold Passport fees, and its
3 management of the Gold Passport Fund.
4

5 **I. Hyatt's Fiduciary Breaches in Connection with Wilson Arlington's Efforts**
6 **to Sell the Hotel**
7

8 205. Beginning in approximately 1999, Wilson Arlington and Hyatt started to
9 discuss a potential renovation of the façade of the Hotel.
10

11 206. Hyatt commissioned an engineering firm to conduct a façade rehabilitation
12 study. In mid-2004, contractors were solicited for completion of a façade project. The
13 bids ranged from approximately \$3 million to approximately \$3.7 million for the
14 project. A contractor was selected to complete the project at a cost of approximately
15 \$3.35 million.
16

17 207. In approximately September 2004, Wilson Arlington was told that the
18 façade project would require an application to the Board of Supervisors of Arlington
19 County, Virginia. The application was submitted in or about early 2005.
20

21 208. In the first half of 2005, Wilson Arlington and Hyatt had a number of
22 discussions with the staff of the Arlington County Board of Supervisors, who indicated
23 that the application was unlikely to be granted with the material that had been
24 proposed. The Arlington County Board of Supervisors' Staff recommended
25 investigating alternative materials, such as granite or metal, to clad the two lower levels
26 of the façade.
27
28

1 209. At the same time, Wilson Arlington and Hyatt were discussing extension
2 or renegotiation of the Management Agreement, which was due to expire on December
3 31, 2006. Hyatt made clear that it was concerned about losing its position managing the
4 Hotel and was also concerned about the prospect of Wilson Arlington selling the Hotel
5 to another owner who may not choose to retain Hyatt as manager of the Hotel.

6
7 210. Representatives of Hyatt and Wilson Arlington met in Chicago in early
8 June 2005 to discuss the terms of an extension and renewal of the Management
9 Agreement. When it became clear that Hyatt's demands were not favorable to the
10 Owner, Wilson Arlington decided that it would offer the Hotel for sale.

11
12 211. Wilson Arlington advised Hyatt that it intended to sell the Hotel, and that
13 it was postponing the façade improvement project indefinitely. Upon learning of
14 Wilson Arlington's decision to postpone the project and to sell the hotel, Hyatt, in
15 September 2005, informed the engineering and construction firms that had been
16 retained for the project that it was terminating its agreements with them due to the
17 indefinite postponement of the project.

18
19 212. In preparing to offer the Hotel for sale to potential buyers in 2005, Wilson
20 Arlington asked Hyatt whether it wanted to have the offering materials include any
21 statement as to whether Hyatt did or did not want to be considered as an operator for
22 the Hotel after its current term expired, and if Hyatt wanted the offering materials to
23 indicate Hyatt's interest in continuing to operate the Hotel, and whether Hyatt also
24 wanted the offering materials to include a statement as to the terms on which Hyatt
25 would offer to operate the Hotel under a future Agreement.

1 213. Hyatt told Wilson Arlington that it did want to be considered as an
2 operator for the Hotel, but it declined to state the terms under which it would agree to
3 operate the Hotel.

4
5 214. Hyatt also asked to receive information about the sales and bidding forms
6 on the basis that it might bid on the Hotel. Wilson Arlington provided Hyatt that
7 information, but Hyatt did not bid on the Hotel.

8
9 215. Wilson Arlington also reminded Hyatt that it had a fiduciary obligation to
10 Wilson Arlington and that Wilson Arlington did not consent to Hyatt attempting to
11 negotiate with potential bidders for the Hotel. Wilson Arlington also advised Hyatt that
12 any prospective buyer would be contractually prohibited from dealing with Hyatt
13 during the sale.

14
15 216. In spite of Hyatt's duties to Wilson Arlington, and contrary to Wilson
16 Arlington's express instructions, Hyatt discussed the potential sale of the Hotel with
17 prospective bidders.

18
19 217. Wilson Arlington did not enter into a contract of sale of the Hotel in 2005.

20
21 218. In 2006, Wilson Arlington offered the Hotel for sale again. In connection
22 with that offering, Wilson Arlington required new potential purchasers to execute a
23 pre-negotiation agreement that specifically provided that the potential purchasers could
24 not use any confidential information disclosed by Wilson Arlington for any purpose
25 involving Hyatt or its Affiliates.

26
27 219. Wilson Arlington excluded Hyatt from participating as a potential
28 purchaser based on its conduct during the 2005 offering. Wilson Arlington also again

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1 advised Hyatt not to discuss the potential sale with prospective purchasers and
2 informed Hyatt of the terms of the pre-negotiation agreement restricting bidders'
3 contact with Hyatt.

4
5 220. In violation of Wilson Arlington's express instructions and Hyatt's
6 fiduciary duties, Hyatt nevertheless had contacts with potential buyers in an attempt to
7 secure Hyatt's continued status as the Hotel's manager under any new ownership.

8
9 221. Hyatt employees at the Hotel even monitored and collected information
10 about the activities of the representatives of potential buyers staying at the Hotel. That
11 information—which included such personal information as what and how much a Hotel
12 guest drank while in the Hotel—was reported to Hyatt executives at its corporate
13 headquarters.

14
15 222. Rather than directing the Hyatt employees to refrain from monitoring
16 Hotel guests and prospective buyers in this manner, Hyatt executives utilized that
17 information for Hyatt's own benefit.

18
19 223. In July 2006, while Wilson Arlington was in discussions with prospective
20 buyers of the Hotel, Hyatt delivered to Wilson Arlington a "Ten-Year Capital Plan" for
21 the Hotel, dated June 30, 2006.

22
23 224. Section 7.4(c)(2) of the Management Agreement required Hyatt "in good
24 faith" to prepare and submit on or before November 1st of each year "an annual
25 detailed capital budget," which was to be subject to the Owner's approval.

1 225. Hyatt had never given Wilson Arlington a Ten-Year Capital Plan for the
2 Hotel prior to July 2006. Until then, Hyatt had given Wilson Arlington capital plans
3 for, at most, three years at a time.
4

5 226. Hyatt had given Wilson Arlington a three-year capital plan in November
6 2005. The three-year capital plan prepared by Hyatt in November 2005 estimated the
7 cost of the façade project at \$3,332,125.
8

9 227. The Ten-Year Capital Plan given to Wilson Arlington in July 2006,
10 however, estimated the cost of the façade project at \$8,588,037—an increase of more
11 than \$5.25 million since the November 2005 capital plan.
12

13 228. Nothing had occurred between November 2005 and July 2006 to increase
14 the anticipated cost of the façade improvement project by more than double the original
15 estimate. In fact, not only had the project been postponed indefinitely in September
16 2005, but the application before the Arlington County Board of Supervisors was
17 formally withdrawn in May 2006.
18

19 229. When Wilson Arlington expressed its shock and disbelief at Hyatt's new
20 cost projection, Hyatt claimed that the inflated cost of the façade came from an estimate
21 that it had received in June 2005 and had not shared with Wilson Arlington. That
22 estimate was not obtained through the bid process used for the original design. That
23 estimate also was based on an all-metal façade design that had not been presented to
24 or approved by Wilson Arlington and was not required by the Arlington County Board
25 of Supervisors.
26

27 230. Hyatt executives privately acknowledged that the estimate was not realistic
28 and did not reasonably estimate the cost of renovating the Hotel's façade. Hyatt also

1 suggested that Wilson Arlington not disclose the Ten-Year Capital Plan to potential
2 buyers, but it refused to withdraw the Ten-Year Capital Plan.

3
4 231. Wilson Arlington had no choice but to provide the Ten-Year Capital Plan
5 to the prospective buyers.

6
7 232. Hyatt's inflation of the façade improvement project and its Ten-Year
8 Capital Plan dramatically reduced the amounts of the bids that Wilson Arlington
9 received for the Hotel, and also reduced the price at which Wilson Arlington ultimately
10 was able to sell the Hotel.

11
12 233. Hyatt's conduct breached its duties to Wilson Arlington under the
13 Management Agreement, and adversely affected the sale price of the Hotel by
14 approximately \$10 million.

15
16 **J. Hyatt's Improper Retention of Wilson Arlington's Intangible Property**

17
18 234. After the sale of the Hotel closed on December 31, 2006, and Wilson
19 Arlington's relationship with Hyatt was terminated, Hyatt retained for its own use, the
20 personal and commercial information regarding guests of the Hotel that it had collected
21 while managing the Hotel.

22
23 235. That intangible property has independent economic value and belongs to
24 Wilson Arlington because Hyatt collected the information in its capacity as Wilson
25 Arlington's agent, fiduciary, and trustee.

FIRST CAUSE OF ACTION**BREACH OF CONTRACT****(As Against All Defendants and DOES 1 through 50, inclusive)**

236. Wilson Arlington repeats and realleges each and every allegation contained in paragraphs 1 to 235 of the General Allegations set forth above, as if fully set forth herein.

237. The Management Agreement, including the Amendments, constitutes a binding and enforceable contract between Hyatt and Wilson Arlington.

238. Wilson Arlington has duly performed all conditions, covenants and promises required to be performed by it under the Management Agreement.

239. In clear and material breach of its obligations under the Management Agreement, Hyatt has, among other things:

- (a) engaged in undisclosed self-dealing transactions, including those involving MT Phone, Avendra, and the Gold Passport Fund;
- (b) retained and failed to disclose, account for, and remit to the Owner all monies and other consideration given to Hyatt, Rosemont, Avendra, and other Hyatt Affiliates by vendors who supplied goods or services to the Hotel;
- (c) improperly charged the Owner for Hyatt's corporate overhead and overhead costs of Affiliates of Hyatt;
- (d) improperly charged the Owner for expenses incurred in connection with Hyatt-managed hotels located outside the United States;
- (e) furnished false financial statements for the Hotel to the Owner;

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- (f) failed to properly account for the fees, allowances, charges, commissions, bonuses, discounts, rebates, profits and/or kickbacks paid to Hyatt, Rosemont, Avendra, and other Hyatt Affiliates by virtue of its management of the Hotel;
- (g) failed to account to the Owner for the Management Fees, Gold Passport fees, and Chain Expenses charged to the accounts of the Hotel;
- (h) provided false, inconsistent and misleading information to the auditors of the Hotel's books and records;
- (i) provided false, inconsistent, and misleading information to the Owner;
- (j) failed to manage the Gold Passport Fund for the benefit of the Owner, to properly account to the Owner for the assets in the Gold Passport Fund, or to return to the Owner its proportionate share of the Gold Passport Fund;
- (k) grossly and improperly inflated the projected cost of improving the Hotel's façade, thereby reducing the sale price of the Hotel; and
- (l) failing to return to Wilson Arlington all of the intangible property, including customer information, that was created and collected by Hyatt in its capacity as Wilson Arlington's agent, fiduciary, and trustee.

240. At all times, Hyatt's conduct was intended to deceive or trick the Plaintiff from discovering the true facts and said conduct did in fact prevent Plaintiff from discovering the truth until on or about June 11, 2008 and more so in June 2009 and thereafter (as a result of the Court's Order attached hereto as Exhibit 2) which disclosed documents which contained the true facts giving rise to this cause of action.

1 241. Wilson Arlington has suffered damages as a direct result of Hyatt's
2 breaches of its obligations under the Management Agreement.

3
4 **SECOND CAUSE OF ACTION**

5 **FRAUD/CONCEALMENT**

6 **(As Against All Defendants and DOES 1 through 50, inclusive)**

7
8 242. Plaintiff hereby incorporates by reference, as though fully set forth at
9 length in this cause of action, each and every paragraph stated above.

10
11 243. Hyatt, by and through its agents, employees and representatives including
12 Chuck Floyd, Vice President of Operations, made the representations alleged in
13 paragraphs 56, 57, 60, 61, 62, 63, 67, 69, 78, 79, 80, 87, 95, 98, 99, 102, 108, 113, 116,
14 117, 118, 121, 123, 124, 125, 127, 142, 143, 146, 148, 150, 153, 165, 187, 192, 196,
15 197, 198, 199, 200, to the Plaintiff.

16
17 244. These representations were in fact false.

18
19 245. When defendants made the representations, defendants knew they were
20 false.

21
22 246. Defendants made the representations with the intent to defraud the
23 Plaintiff for the purpose of receiving compensation and remuneration to which it was
24 not entitled and/or to trick and deceive the Plaintiff so that Plaintiff would not discover
25 the true facts.

1 247. At the time plaintiff acted, plaintiff did not know the representations were
2 false and believed they were true. Plaintiff acted in justifiable reliance upon the truth
3 of the representations.

4
5 248. Defendants concealed or suppressed material facts, such that defendants
6 never intended to perform in accordance with the Management Agreement attached
7 hereto as Exhibit 1. The concealed facts are set forth in paragraphs 45, 46, 47, 48, 49,
8 50, 51, 52, 53, 54, 55, 58, 59, 65, 66, 70, 75, 76, 77, 78, 79, 84, 92, 93, 94, 96, 119,
9 120, 126, 142, 144, 146, 152, 153, 167, 168, 173, 188, 189, 190, 191, and 193 herein.
10 Plaintiff did not learn of the falsity of Defendants' representations until on or about
11 June 11, 2008 and again after June 2009 when Hyatt was sanctioned \$100,000.00 and
12 ordered to produce documents it either failed to produce or to disclose their existence
13 (*see*, Exh. 2).

14
15 249. Defendants concealed or suppressed material facts that defendants were
16 bound to disclose.

17
18 250. Defendants concealed or suppressed material facts by telling Plaintiff
19 untruths to mislead Plaintiff and prevent Plaintiff from discovering the concealed or
20 suppressed facts and documents.

21
22 251. At the time Plaintiff acted, Plaintiff was unaware of the concealed or
23 suppressed facts and would not have continued to do business with Hyatt if Plaintiff
24 had known the true facts.

25
26 252. In justifiable reliance upon Defendant's conduct, Plaintiff continued to do
27 business with Hyatt under the terms and conditions of the Management Agreement
28 attached hereto as Exhibit 1.

1 253. Because of plaintiff's reliance upon defendants' conduct, plaintiff has and
2 incurred substantial damages in an amount to be determined.

3
4 **THIRD CAUSE OF ACTION**

5 **BREACH OF FIDUCIARY DUTY**

6 **(As Against All Defendants and DOES 1 through 50, inclusive)**

7
8 254. Plaintiff hereby incorporates by reference, as though fully set forth at
9 length in this cause of action, each and every paragraph stated above.

10
11 255. By virtue of entry into the Management Agreement attached as Exhibit 1,
12 Defendants in their capacity as hotel operators, owed Plaintiff a duty of utmost loyalty
13 and fidelity, including without limitation a duty of fair, open and honest disclosure and
14 a duty of care not to engage in acts of self-dealing, fraud, or in any other action which
15 would cause injury to the Plaintiff.

16
17 256. Defendants breached their fiduciary duty which they owed to plaintiff
18 through their deceitful, manipulative acts in connection with the parties' agreement.
19 Defendants breached their fiduciary duties by engaging in acts of fraud, self-dealing
20 and bad faith.

21
22 257. Plaintiff at all times demonstrated the highest degree of loyalty in its
23 dealings with Defendants. However, Defendants, secretly plotted to deceive the
24 Plaintiff and failed to measure up to the standard of conduct set by Plaintiff.
25 Defendants undermined the food faith which Plaintiff put in them and breached their
26 fiduciary duties."

1 258.” By reason of the breach by Defendants, Plaintiff was caused to and did
2 suffer and sustain special and general damages according to proof, for which sum
3 Plaintiff seek judgment in this action.

4
5 259. Because the acts and/or omissions of Defendants as set forth herein were
6 either committed by such Defendants directly or authorized, ratified, or otherwise
7 approved by officers, directors, and/or managing agents of the aforementioned
8 defendants, and carried out in a deliberate, cold, callous, intentional, and/or
9 unreasonable manner, causing injury and damage to Plaintiff, and done with a
10 conscious disregard of Plaintiff’s rights, Plaintiff requests the assessment of punitive
11 damages against Defendants, in an amount appropriate to punish or set an example of
12 said Defendants.

13 14 **FOURTH CAUSE OF ACTION**

15 **NEGLIGENT MISREPRESENTATION**

16 **(As Against All Defendants and DOES 1 through 50, inclusive)**

17
18 260. Plaintiff incorporates by reference, as though fully set forth at length in
19 this cause of action, each and every paragraph stated above.

20
21 261. Defendants’ misrepresentations included, but were not limited to, those
22 actions and statements described in paragraphs 56, 57, 60, 61, 62, 63, 67, 69, 78, 79,
23 80, 87, 95, 98, 99, 102, 108, 113, 116, 117, 118, 121, 123, 124, 125, 127, 142, 143,
24 146, 148, 150, 153, 165, 187, 192, 196, 197, 198, 199, 200, herein.

25
26 262. Defendants misrepresented these facts to Plaintiff without having
27 reasonable grounds for believing said facts to be true.

1 263. At the time Plaintiff acted, it was unaware of the misrepresented facts, and
2 it would not have acted as it did if it had known such facts.

3
4 264. Plaintiff's reliance upon Defendants' representations was reasonable
5 because Defendants had an established reputation in the industry and Plaintiff had no
6 grounds to believe the representations were false at the time they were made.

7
8 265. As a result of its reliance upon Defendants' representations, Plaintiff was
9 induced to continue to do business with Hyatt under the terms of the Management
10 Agreement.

11
12 266. By reason of the representations of Defendants, Plaintiff was caused to and
13 did suffer and sustain special and general damages according to proof, pursuant to
14 section 425.10 of the California Code of Civil Procedure, for which sum Plaintiff seeks
15 judgment in this action.

16
17 267. Because the representations of Defendants were either committed by such
18 Defendants directly, or authorized, ratified, or otherwise approved by officers,
19 directors, and/or managing agents of the aforementioned Defendants, and carried out
20 in a deliberate, cold, callous, intentional, and/or unreasonable manner, causing injury
21 and damage to Plaintiff, and done with a conscious disregard of Plaintiff's rights,
22 Plaintiff requests the assessment of punitive damages against Defendants, in an amount
23 appropriate to punish or set an example of said Defendants.

24 ///

25 ///

26 ///

27 ///

28 ///

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FIFTH CAUSE OF ACTION**ACCOUNTING****(As Against All Defendants and DOES 1 through 50, inclusive)**

268. Plaintiff incorporates herein all of the allegations and statements contained in paragraphs 1 through 267, inclusive.

269. The total amount of money earned by defendants, and each of them, as a result of their wrongful conduct is unknown to Plaintiff at this time and cannot be ascertained without an accounting of the records of Defendants and Does 1 through 50, inclusive, and each of them.

270. An accounting is the only means by which the exact amounts that were improperly taken from the Hotel's trust accounts and the Gold Passport trust funds and given to Hyatt and/or its Affiliates can be determined. An accounting is also the sole means by which to evaluate the validity and fairness of the transactions effected by Hyatt against the Hotel's trust accounts and the Gold Passport trust fund.

271. Wilson Arlington is entitled to and hereby seeks a full accounting of the Hotel's operating accounts, the Gold Passport trust fund and all other accounts operated and/or controlled by Hyatt, including all revenues and expenses deposited into and paid out of those trusts. Wilson Arlington further seeks disgorgement and restitution of all Management Fees and other fees, charges, rebates, allowance, kickbacks, and other payments received by Hyatt by virtue of operation of the Hotel from 1985 to 2006, for which Hyatt cannot fully account.

///

///

///

PRAYER FOR RELIEF

WHEREFORE, Wilson Arlington Company prays as follows:

- (a) Finding that Hyatt has materially breached the Management Agreement governing the relationship between the parties;
- (b) Ordering Hyatt to account for the Management Fees, Gold Passport Fees, and Chain Expenses charged to the accounts of the Hotel or Wilson Arlington;
- (c) Ordering Hyatt to account for all monies paid by the Owner into the Gold Passport Fund since 1987;
- (d) Ordering Hyatt to disgorge all Management Fees, Gold Passport Fees, and Allocable Chain Expenses charged to the accounts of the Hotel or Wilson Arlington;
- (e) Ordering Hyatt to disgorge all profits and other consideration received or retained in undisclosed Affiliate transactions conducted on behalf of the Hotel or Wilson Arlington;
- (f) Ordering Hyatt to disgorge all undisclosed profits and other consideration received or retained by Hyatt through its transactions with other third parties on behalf the Hotel or Wilson Arlington;
- (g) Ordering Hyatt to account for all monies received by Avendra, Rosemont, or any other Hyatt Affiliate on account of transactions conducted on behalf of the Hotel or Wilson Arlington;
- (h) Ordering Hyatt to account for, return, disclose any sale, license, or third-party use authorized by Hyatt of, and cease use of, all of the intangible property, including customer information, that was created and collected by Hyatt in its capacity as Wilson Arlington's agent, fiduciary, and trustee.

///

- 1 (i) Awarding Wilson Arlington monetary damages in the amount of \$45
2 million;
3 (j) Awarding to Wilson Arlington its attorneys' fees, costs and expenses
4 related to this action;
5 (k) An accounting of Defendants' books and records relative to
6 Defendants' operation of the Hotel;
7 (l) Punitive damages; and
8 (m) Awarding to Wilson Arlington such further relief as the Court deems
9 just and proper.
10

11 DATED: May 5, 2010

GREENE BROILLET & WHEELER, LLP

12
13
14 Bruce A. Broillet, Esq.
15 Mark T. Quigley, Esq.
16 Scott H. Carr, Esq.
17 Attorneys for Plaintiff
18 WILSON ARLINGTON COMPANY
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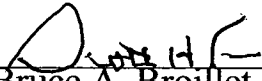
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: May 5, 2010

GREENE BROILLET & WHEELER, LLP



Bruce A. Broillet, Esq.
Mark T. Quigley, Esq.
Scott H. Carr, Esq.
Attorneys for Plaintiff
WILSON ARLINGTON COMPANY

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MANAGEMENT AGREEMENT

between

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a New Jersey corporation**

and

**HYATT CORPORATION,
a Delaware corporation**

P30003124

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MANAGEMENT AGREEMENT

THIS AGREEMENT, made and dated this 19th day of February, 1980, by and between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation (hereinafter called "Owner" or "Prudential") and HYATT CORPORATION, a Delaware corporation (hereinafter called "Hyatt").

RECITALS

WHEREAS, Owner has acquired the Tenant interest and is the Tenant of that certain real property located in Arlington County, Virginia (hereinafter called "Site"), and more particularly described in Exhibit A attached hereto and made a part hereof, pursuant to that certain Agreement of Lease, dated June 1, 1973, between MURPHY & AMES, INC. (hereinafter called "M & A") as Landlord and R-V DEVELOPMENT COMPANY (hereinafter called "R-V") as Tenant, as amended by First, Second and Third Amendments to Agreement of Lease, dated September 9, 1975, April 1, 1976, and June 30, 1976, respectively, and executed by M & A and R-V (the said Agreement of Lease as so amended hereinafter called the "Ground Lease"); and

WHEREAS, Owner has purchased the hotel building containing no fewer than 300 rooms (hereinafter called the "Building") and has caused the Building to be completed in accordance with plans and specifications heretofore approved by Hyatt, and has caused to be purchased and installed in and about the Building the following personal property, plans and specifications for which Hyatt has approved: Furnishings and Equipment, consisting of furniture and furnishings and

hotel equipment ("Furnishings and Equipment"), and operating equipment, consisting of uniforms, tools, and utensils and china, glassware, linens, silverware and the like ("Operating Equipment") (all of the foregoing hereinafter called "FFE"); and

WHEREAS, Owner desires to have the aforesaid hotel managed by Hyatt for the account of the Owner and Hyatt desires to undertake management of the aforesaid hotel for the account of the Owner.

NOW, THEREFORE, the Owner and Hyatt do enter into this Agreement and mutually agree to the following terms and conditions:

Section 1. Certain Terms Defined.

(a) "Capital Improvements" for purposes of this Agreement refer to any alterations, additions, or improvements in or to the Improvements or rebuilding or renovation of the Building, the cost of which is neither charged to repairs and maintenance, nor provided in Sections 5.1(b)(iii), 6.1, 6.4, 9.1 and 10.5.

(b) "Ground Rent" for purposes of this Agreement refers to the rent, including minimum or fixed rent and percentage rent, payable under Article 3 of the Ground Lease, exclusive of any other charges payable by the Tenant under the Ground Lease.

(c) "Hotel" for purposes of this Agreement refers to the Real Property and the FFE.

(d) "Improvements" for purposes of this Agreement refers to the Real Property and related improvements

thereto.

(e) "Real Property" for purposes of this Agreement refers to the Site and the Building.

Section 2.

Term.

2.1 The term of this Agreement (hereinafter called "Term") shall commence on January 1, 1980 and shall terminate on December 31st of the thirtieth (30th) fiscal year from the December 31st of the year of the Opening Date, unless this Agreement shall be sooner terminated in accordance with its terms.

2.2 In addition to any other right of termination under this Agreement, Owner shall have the right to terminate this Agreement without cause by giving to Hyatt a notice specifying the date of termination, which shall be not earlier than nine (9) months from the first day of the month next succeeding the date of the notice of termination sent by the Owner. In the event that Owner elects to terminate this Agreement as provided in Section 2.2, Owner shall pay to Hyatt on or before the specified date of termination a termination fee equal to three (3) times the Annual Management Fee (as defined in Section 4.2.1 hereof) paid to Hyatt in respect of the full fiscal year immediately preceding the date on which notice of termination was given.

Section 3.

Use and Operation of the Hotel.

3.1

Use and Standard of Operation.

(a) Owner hereby agrees that Hyatt shall manage and operate the Hotel in accordance with the terms of this Agreement, and Hyatt hereby agrees to manage

and operate the Hotel in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, such management and operation of the Hotel by Hyatt shall include and extend to, among others, the operation of the Hotel for all activities which are customary and usual to a hotel business; the charges to be made for rooms and commercial space other than space leased to concessionaires, for entertainment and amusement, and for food and beverages; the labor policies of the Hotel (including wage rates, the hiring and discharging of employees, and the installation of employee retirement and other benefit plans, all subject to Section 3.1(c), below); and all phases of promotion and publicity. Hyatt is hereby authorized to negotiate and enter into such reasonable contracts as agent for Owner as may be necessary or advisable in connection with operation of the Hotel, subject to Owner's written approval of (1) contracts having a term of greater than one year, including renewals, or are not terminable within one year from the date of their execution without cause, cost or penalty; (2) any contract or series of related contracts which in the aggregate bind Owner to aggregate payments exceeding Ten Thousand Dollars (\$10,000.00) except for contracts for sales of food, beverages, or rooms; and (3) contracts with a corporation or a person or persons controlling, controlled by, under common control of, or affiliated with Hyatt; provided, however, that, subject to the provisions of Section 5.1(b)(ii), Hyatt shall have the right to contract with, or otherwise appoint its affiliate, Rosemont Purchasing Company ("Rosemont"), to act as purchasing agent for the Hotel and to pay Rosemont a fee or fees for its services so long as such fee or fees are no greater than

those charged by Rosemont for comparable services performed for unaffiliated third parties. None of the contracts negotiated and entered pursuant to the authority granted by this subsection shall contain provisions making them automatically renewable. Hyatt shall make available at the Hotel at all times to Owner executed counterparts or certified true copies of all contracts it enters pursuant to this Section 3.1(a), including, but not limited to, those for equipment leasing and for maintenance. Should Hyatt receive notice of any lien, encumbrance or charge upon the Real Property arising out of any contract entered by Hyatt as aforesaid, Hyatt immediately shall give Owner notice of the same with a photocopy of the notice and all supporting documents received by Hyatt. Hyatt shall use its best efforts to take whatever action with Owner's approval is necessary to remove the lien, encumbrance or charge, provided, however, that this obligation on Hyatt shall not be deemed to require Hyatt to expend funds except on behalf of Owner.

(b) Except as elsewhere herein limited or excused, Hyatt shall, throughout the Term, comply with all applicable requirements (hereinafter called the "Legal Requirements") under all laws, statutes, ordinances, orders, rules and regulations of governmental authorities having jurisdiction over the Hotel and Hyatt shall defend any actions, suits or proceedings alleging non-compliance in accordance with the provisions of this subparagraph. Hyatt may, but only after approval by Owner, contest, by appropriate legal proceedings conducted in good faith, in the name of Hyatt or Owner, or both, the validity or application of any Legal Requirements. If Hyatt shall pursue any such contest

in the name of Owner, Owner shall approve the attorney or law firm to be employed prior to initiating such contest. If Owner shall approve any such contest, Owner at its discretion shall execute and deliver any appropriate documents which may be necessary or proper to permit Hyatt to prosecute such contest. Owner may, by notice to Hyatt, direct Hyatt to contest, or Owner may contest directly, any Legal Requirements which Hyatt may otherwise desire not to contest.

(c) All employees of the Hotel shall be the employees of Hyatt and at the end of each payroll period, Hyatt may reimburse itself out of the operating accounts, as hereinafter defined, for their total aggregate compensation, including fringe benefits.

The term "fringe benefits" includes, without limitation, bonuses, pension or profit sharing plan contributions, incentive compensation, workmen's compensation insurance, group life and accident and health insurance premiums and similar benefits available to such employees by virtue of their employment by Hyatt. All "fringe benefits" shall be in conformity with Hyatt corporate plans; shall be equal in all respects to those for employees of other hotels operated by Hyatt; shall, as the "fringe benefits" effect this Hotel, be allocated to this Hotel; and, as they apply to this Hotel, shall be subject to audit by the Owner. Hyatt will provide Owner with a schedule showing details of all fringe benefit plans in effect as of the date of this Agreement. Owner shall be advised not less than sixty (60) days prior to institution of any fringe benefits subsequent to the date of this Agreement for personnel employed at the Hotel. All non-scheduled perquisites to

Hyatt employees payable out of the operating accounts shall be subject to Owner's approval.

Hyatt shall provide a schedule of compensation for the executive staff of the Hotel indicating the salary range and perquisites for each position. The annual executive bonus budget (as a part of the annual budget) for the Hotel shall be subject to Owner's approval. In the event an employee is hired by the Hotel or transferred to the Hotel, and then transferred from the Hotel by Hyatt before completing one full year of service at the Hotel, then the hiring, education, transportation, or relocation expenses for such an employee which have been charged against the Hotel's operations shall be reimbursed to the Hotel by Hyatt.

Prior to making a change of the General Manager of the Hotel, Hyatt shall inform Owner's Vice President, Hotel Investments, of the proposed change.

The expenses of travel by Hyatt corporate personnel in connection with the Hotel shall be borne by Hyatt and not charged as operational expense to the Hotel.

In the event, and whenever, Hyatt shall be subject to any tax, irrespective of its designation (including a fee, charge or other imposition for the issuance of a license, permit or the privilege to conduct a business or occupation), imposed, levied, or assessed by the United States, the State of Virginia, the County of Arlington, or any municipality or by any subdivision or agency of the foregoing, which tax is measured by reimbursements for wages and salaries and any fringe benefits as aforesaid paid to or

in respect of employees who are directly employed at the Hotel for the sole purpose of operation of the Hotel, then, and in any such event, Owner will indemnify and hold Hyatt harmless from and against any liability for such tax or taxes, it being expressly understood that taxes paid and collected under the Federal Insurance Contributions Act and under the Federal Unemployment Tax Act and corresponding state taxes shall not be included within the foregoing indemnification. At Owner's request, Hyatt will resist, by appropriate proceedings, any liability for any tax included in this Section 3.1 (d), in which case costs and expenses (including, without limitation, attorney's fees) incurred by Hyatt in resisting or defending itself against such liability shall be charged as an operating expense of the Hotel.

(d) Subject to the availability of funds, Hyatt agrees to exercise its obligations under this Agreement in such a manner as not to violate Owner's obligations under the Ground Lease and Hyatt will not suffer or permit a default to arise under the Ground Lease by reason of its failure to satisfy any of Owner's obligations contained therein, it being expressly understood that Hyatt has no obligation to make the rent or any other payments under the Ground Lease. Hyatt acknowledges receipt of the Ground Lease and Owner will provide Hyatt with copies of any amendments to the Ground Lease executed subsequent to the date of this Agreement.

3.2 Leases and Concessions.

(a) Hyatt shall operate and provide in the Hotel all facilities and services except for such concessionaire operations as may be mutually agreed upon by Hyatt and Owner

normally operated or provided directly by managers or operators of hotels of comparable class and standing and shall not lease the Hotel or any portion thereof or grant concessions in respect of such services or facilities without the approval of Owner. Any such lease or concession shall be approved by Owner and shall be entered into in Owner's name and shall be executed by Owner. Any such lease shall be subordinate to the Ground Lease and will contain those provisions required by Article 19 of the Ground Lease.

(b) Hyatt shall, during the Term, use reasonable efforts to perform all of the obligations of Owner as Landlord or concessionaire under all present or future leases and concessions made or granted with respect to the Hotel, such performance being subject to the approval of the Owner.

(c) Hyatt shall collect all rents and other sums falling due during the Term under any present or future leases or concessions, and shall deposit the same in the operating accounts. Hyatt recognizes and agrees that rents from any such leases have been assigned by Owner to the Ground Lease Landlord in the event of Owner's default thereunder for payment of the ground rent due. Hyatt further recognizes and agrees that advanced rents under such leases cannot be collected except for the first month's rent in the due course of business and in good faith for up to four months in advance of the date due and payable, and for amounts obtained for reasonable security.

3.3 Bank Accounts.

There shall be deposited in a bank or banks designated by Owner, in accounts established in the

name of "Arlington Hyatt-Rep Account" with written instructions to the bank or banks in which the accounts are located that the funds therein are held in trust for Owner, all moneys advanced to the Hotel as working capital by Owner, as provided in Section 7.1 hereof, and all moneys received by Hyatt from the operations of the Hotel (these accounts herein called "operating accounts"). Hyatt shall pay out of the operating accounts, to the extent of the funds from time to time therein and available to Hyatt, all costs and expenses incurred in connection with the operation of the Hotel, as set forth in Section 3.4, below. Checks or other documents of withdrawal drawn upon the operating accounts shall be signed by representatives of Hyatt or Hotel employees designated by Hyatt, which persons drawing on such accounts shall be bonded or otherwise insured. Through the use of signature cards, authorized representatives of the Owner shall be permitted access to any and all funds in the bank accounts described in this Section 3.3, and Sections 5.1 and 7.1. Hyatt's authority to draw against such accounts may be terminated at any time by Owner without notice to Hyatt. If Hyatt's authority to draw against such accounts is so terminated, Owner shall leave in these accounts sufficient funds to cover those checks known to be outstanding as of the date of the takeover.

3.4 Expenditures.

To the extent of funds from time to time in the operating accounts, (or, if appropriate, from house banks or petty cash funds available at the Hotel), Hyatt is hereby authorized to pay such amounts and at such times as are required in connection with the maintenance and

operation of the Hotel and related facilities, including without limitation the following:

(a) making all repairs, decorations, revisions, alterations and improvements to the Hotel as shall be reasonably necessary for the proper maintenance thereof in good order, condition and repair to correct normal fair wear and tear, subject to the applicable approved budgets, set forth in Section 7.4(c), however, not to include any replacements of furniture, fixture and equipment or any other capital expenditures;

(b) purchasing such operating supplies as shall be reasonably necessary for the proper operation of the Hotel;

(c) applying for, obtaining and maintaining all licenses and permits, except for liquor licenses, required of the Owner or Hyatt in connection with the operation and management of the Hotel; Owner agrees to execute and deliver any and all applications and other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with Hyatt in applying for, obtaining and maintaining such licenses and permits;

(d) making all other reimbursements and other amounts due to Hyatt and its affiliates under any of the provisions of this Agreement; but in any event subject and pursuant to all the terms and provisions of this Agreement.

Hyatt agrees that any services rendered by or merchandise purchased from any third person or from Hyatt or any of its affiliates shall at all times be fully competitive with the prices available from third parties.

Section 4. Management Fees and Remittances to Owner.

4.1 Definitions.

(a) A "fiscal year" hereunder shall mean a period of twelve (12) consecutive months included in the Term and ending on December 31st and, in the event that there shall be an early termination of the Term on a date other than December 31st, the last fiscal year hereunder shall end on the date of such early termination and shall commence on the preceding January 1st.

(b) A "short fiscal year" shall be a fiscal year comprising less than twelve (12) full calendar months.

(c) The "Cumulative Period" in respect of any month included in a fiscal year shall mean the period commencing on the first day of such fiscal year and ending on the last day of such calendar month. The Gross Operating Profit for any Cumulative Period shall mean the sum of the amounts of Gross Operating Profit for each calendar month included in such Cumulative Period, such sum to be determined after taking into account any deficit in Gross Operating Profit for any such calendar month.

(d) The "Gross Operating Profit" shall be defined as the Gross Operating Profit shown on a copy of page 12 of the Uniform System of Account for Hotels, Sixth Revised Edition (hereinafter called the "Current Uniform System"), without regard to supplements or additions thereto hereafter adopted, showing the items of income and expense which are taken into account in determining "Gross Operating Profit", attached hereto as Exhibit B (but without taking into account any deduction for the Annual Management Fee, as

hereinafter defined);

(e) The "Adjusted Profit" for any period shall mean the Gross Operating Profit for such period less the sum of the following (but only to the extent such items are not otherwise deducted under the Current Uniform System in computing Gross Operating Profit):

(1) The Basic Fee for such period payable pursuant to Section 4.2.1 if such period be a fiscal year or, if such period be less than a fiscal year, the aggregate amount of the tentative monthly installments on account of the Basic Fee payable for such period pursuant to Section 4.2.2(a); and

(2) An amount equal to ten percent (10%) of the total cost of the Hotel to Owner (hereinafter called "Project Cost") determined in accordance with generally accepted principles of accounting. The Project Cost as of any date during the Term shall be an Initial Project Cost of \$14,601,704.76 plus any additions to Project Cost provided for in Sections 5.1(b)(iii), 6.3, 6.4, 9.1, and 10.5 hereof incurred prior to such date.

(3) An amount equal to the aggregate deductions for such period made under Section 5.1 as if Reserve Account established thereunder were funded, without regard to whether or not the said Reserve Account is actually funded at any time during such period;

(4) Premiums on insurance maintained in accordance with Section 8 and properly allocable to such period;

(5) All real and personal property taxes referred to in Section 7.5 and all other taxes (other than income taxes) arising out of the Hotel operation and properly allocable to such period;

(6) All costs and expenses incurred during such period in respect of items described in Section 6.1;

(7) Ground Rent properly allocable to such period;

(8) The amount of proceeds from any sale of Furnishings and Equipment and Operating Equipment during such period;

(9) All other reasonable costs and expenses incurred during such period in the operation of the Hotel and all other amounts deductible in respect

of such period under the terms of this Agreement.

(f) The "Fixed Basic Fee" for a full fiscal year shall be \$100,000.00. The "Fixed Basic Fee" for a short fiscal year shall be \$100,000.00 multiplied by a fraction (the "Partial Year Fraction") of which the denominator is twelve (12) and the numerator is the number of months contained in such fiscal year (and for the purpose of computing such Partial Year Fraction, a partial month shall be expressed as a fraction, hereinafter referred to as the "Partial Month Fraction" for such partial month, of which the denominator is thirty (30) and the numerator is the number of days included in such partial month). The "Fixed Monthly Installment" on account of the Fixed Basic Fee shall mean \$8,333.33 for a full calendar month; for a partial month the Fixed Monthly Installment shall be \$8,333.33 multiplied by the Partial Month Fraction for such partial month.

4.2 Hyatt's Management Fee.

4.2.1 Annual Management Fee.

For each fiscal year Hyatt shall receive, in respect of its management services hereunder, an amount (hereinafter called the "Annual Management Fee") equal to the sum of the Basic Fee and Incentive Fee, as provided in the ensuing clauses (a) and (b):

(a) Hyatt shall receive a Basic Fee equal to the Fixed Basic Fee for such fiscal year or ten percent (10%) of the Gross Operating Profit for such fiscal year whichever shall be the greater.

(b) For any such fiscal year for which there is an Adjusted Profit, Hyatt shall receive, in addition

to the Basic Fee, an Incentive Fee equal to twenty percent (20%) of the Adjusted Profit for such fiscal year.

4.2.2 Time and Manner of Payment.

(a) With respect to any fiscal year and each calendar month, the Basic Fee shall each be payable in tentative monthly installments in the amount provided in clause (b) immediately following. The tentative monthly installments on account of such Basic Fee shall be paid to Hyatt twenty (20) days after Owner has received the financial statement for such calendar month submitted by Hyatt pursuant to Section 7.4 hereof by a check in the amount of the tentative monthly installments issued to Hyatt by Owner's Capital Real Estate Investment Office, or its successor in responsibility (hereinafter called "REIO").

(b) With respect to each calendar month included in any such fiscal year, the tentative monthly installment on account of the Basic Fee for any such calendar month shall equal (i) an amount determined by multiplying \$8,333.33 by the number of months included in the Cumulative Period in respect of such month or ten percent (10%) of the Gross Operating Profit for such Cumulative Period, whichever is greater, less (ii) the aggregate amount of the tentative monthly installments having theretofore become payable for such fiscal year on account of such Basic Fee.

(c) The Incentive Fee described in Section 4.2.1(b) shall be paid annually upon submission by Hyatt to Owner the Financial Statement for last month of the fiscal year pursuant to Section 7.4 hereof.

(d) If, for any such fiscal year, the aggregate amount of the tentative monthly installments paid

to Hyatt on account of the Basic Fee and the annual Incentive Fee shall be more or less than the Annual Management Fee payable for such fiscal year based upon the final determination of the Gross Operating Profit and Adjusted Profit for such fiscal year as reflected in the Financial Statement for the last month of fiscal year pursuant to Section 7.4 hereof, then, by way of yearend adjustment within fifteen (15) days after the delivery of such Financial Statement to Owner, Hyatt shall pay to Owner at its REIO the amount of any such overpayment or shall receive from the Owner's REIO a check in the amount of any such underpayment. However, Owner reserves the right to audit the Financial Statement and the parties hereto shall adjust payments made and received by and between them as may be required upon completion of the Owner's audit. Disputes arising under this Section 4.2.2 shall be resolved by an independent Certified Public Accountant selected by Owner, whose findings shall be conclusive and whose fees for services rendered in resolving the dispute shall be paid by the party against whom the independent accountant finds, provided that variance is in excess of five (5%) percent.

4.3

Remittances to Owner.

If at the end of any calendar month, the total funds in the operating accounts shall exceed the amount required in order to maintain the working capital then on hand at the level of the Working Capital Standard provided in Section 7.1, then, contemporaneously with furnishing of the Financial Statement for such calendar month, pursuant to Section 7.4 hereof, Hyatt shall remit to Owner out of the operating accounts the amount of such excess (hereinafter

called the "Owner's Remittance Amount"). Each remittance shall be paid to Owner at Owner's address then in effect for receipt of notices hereunder by Owner, or at such other place as Owner may, from time to time, designate in a notice to Hyatt.

4.4 Supplemental Payment.

In addition to the Owner's Remittance Amount, to be paid by Hyatt under Section 4.3, Hyatt shall pay, in respect of each calendar month during the Term, as a supplemental payment to Owner, the amount deductible under Section 5.1 hereof in respect of such calendar month and payable under Section 5.1 into the Reserve Account referred to therein, such amount to be paid by Hyatt into such Reserve Account for the account of Owner. This Section 4.4 shall become operative only if the Reserve Account established by Section 5.1 shall become funded as therein provided, and shall not be operative anytime the Reserve Account is not funded.

4.5 Performance Test.

The Owner's Objective for any year is the receipt of net Owner's Remittance Amounts (the total of Owner's Remittance Amounts less Hyatt's Annual Management Fee) equal to ten percent (10%) of the total amount of the Project Cost, as defined in Section 4.1(e)(2), plus the total amount of money that would be placed in the Reserve Account, as defined in Section 5.1, if the said account were to be funded. If the Owner's Objective is not attained for any two consecutive fiscal years of operation, then Owner may terminate this Agreement upon written notice to Hyatt of such termination, within ninety (90) days after the delivery

of the year end Financial Statements pursuant to Section 7.4(a), which notice shall specify a date of termination, and Owner shall not be liable to Hyatt for any lost earnings resulting from such termination. In the event that Owner does not elect to terminate this Agreement, then the Owner's objective for the first year of such two year period shall be deemed to have been met.

Section 5. Replacement of Furnishings and Equipment.

5.1 Furnishings and Equipment Reserve Account.

(a) A Furnishings and Equipment Reserve Account (herein called "Reserve Account") shall be opened for the purpose of setting aside a reserve for the purchase of Furnishings and Equipment, and for expenditures for Capital Improvements except for those paid by Owner under Sections 5.1(b)(iii), 6.3, 6.4, 9.1 and 10.5 (and not for those expenses which would be made under the repairs and maintenance account of a hotel operation.) For so long as The Prudential Insurance Company of America ("Prudential") is Owner of the Hotel, at Prudential's option, the Reserve Account may be unfunded. The provisions of Section 5.1(b) hereof shall be applicable for the purposes of this Agreement, whether or not the Reserve Account be funded, and if the Reserve Account shall not be funded, the accounting transactions required by Section 5.1(b) shall be made as book entries.

(b) Hyatt shall deduct from the operating accounts for each calendar month included in such period the "applicable amount," hereinafter defined, for such calendar month and shall pay such amount deducted into the Reserve Account. The Reserve Account shall be maintained on deposit

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by Hyatt in trust for Owner, in an interest bearing bank account. The moneys in the Reserve Account shall be the property of Owner. Interest earned during any period from the amounts in the Reserve Account shall be excluded in computing Gross Operating Profit for such period. To the extent that Hyatt shall be required to pay any income taxes on such interest as a fiduciary, the same shall be payable out of the Reserve Account.

(i) The "applicable amount" shall be two percent (2%) of Gross Revenue for each calendar month. For the purpose of determining the applicable amount, the term "Gross Revenue" shall mean Net Revenues of Total Operated Departments determined in accordance with the Current Uniform System on an accrual basis in accordance with generally accepted accounting principles consistently applied.

(ii) The management of the Hotel shall be entitled to withdraw from the Reserve Account in accordance with the Approved Budget any amounts approved by Owner to make all replacements of, and additions to, the Furnishings and Equipment and the Capital Improvements deemed to be necessary or desirable and approved by Owner, and the items of Furnishings and Equipment and Capital Improvements so replaced or added shall be and become, forthwith upon acquisition and installation, and without further act or action, the property of Owner and part of the Hotel. All such replacement or additional items may be purchased by Hyatt at competitive prices as approved by Owner. Owner reserves the right to require Hyatt to obtain competitive pricing information prior to purchasing any such replacement or additional items. Owner further reserves the right to review the competitive pricing information obtained by Hyatt and if the Owner can purchase the replacement or additional items at an equivalent or lower total cost, the Owner may purchase the items for Hyatt.

(iii) Hyatt shall not, without the approval of Owner, expend any moneys for replacements of, or additions to, the Furnishings and Equipment or for Capital Improvements in excess of the amount then existing in the Reserve Account, and, notwithstanding anything to the contrary contained in this Agreement, Hyatt's obligations with respect to additions to, or replacements of, Furnishings and Equipment and Capital Improvements shall be excused to the extent that the amount in such Fund is inadequate to meet such obligations. If Hyatt shall, with the approval of Owner, expend such

money in excess of the amount then existing in the Reserve Account, as if the Reserve Account were funded, the amount so expended shall be deemed to be an addition to Project Cost of the Hotel for the fiscal year in which the excess amounts are expended for the purpose of determining Adjusted Profit. Owner shall be obligated to make sufficient funds available to Hyatt so that the Hotel can be maintained at all times during the term in accordance with the standard of a first class hotel.

(iv) Any funds received from the proceeds of the sale of any Furnishings and Equipment from the Hotel shall be paid into the Reserve Account or directly to the Owner at Owner's sole discretion.

(v) Any amounts remaining in the Reserve Account at the termination or expiration of the Term or at the time Prudential elects that the Reserve Account be unfunded shall be returned by Hyatt to Owner.

5.2 Labeling of Items Purchased.

As the replacement or additional items are purchased and installed, Hyatt shall label each item with the year of acquisition in conformity with Internal Revenue Service requirements for use of the Asset Depreciation Range method of depreciation by Owner.

5.3 Liens.

Should Hyatt receive notice of any lien, encumbrance or charge upon the Real Property arising out of any action taken by Hyatt pursuant to this Section 5, Hyatt shall immediately give Owner notice of the same with a photocopy of the notice and all supporting documents received by Hyatt.

Section 6. Repairs and Changes; Legal Requirements.

6.1 Repairs and Maintenance.

Hyatt shall, throughout the Term, take good care of the Hotel and maintain the same in good order and condition and make all reasonably necessary repairs

thereto; provided, however, that Hyatt shall be relieved of such obligation to the extent that there is unavailable to it either from the operating accounts or from Owner, sufficient funds to fulfill such obligation.

6.2 Alterations and Additions.

Except as hereinafter provided, Hyatt shall make no alterations, additions or improvements in or to the Improvements without the approval of Owner. Notwithstanding the preceding sentence, Hyatt shall have the right without Owner's approval, from time to time during the Term, to make alterations, additions or improvements in or to the Improvements, which shall become part thereof, for the purpose of improving the operation of the Hotel, provided that the aggregate amount which may be incurred in respect thereof during any fiscal year shall not exceed ten percent (10%) of the aggregate amount deductible under Section 5.1 for each of the calendar months included in such fiscal year. Should Hyatt receive notice of any lien, encumbrance or charge upon the Real Property arising out of any action taken by Hyatt pursuant to this Section 6.2, Hyatt shall immediately give Owner notice of the same with a photocopy of the notice and all supporting documents received by Hyatt. Hyatt shall take whatever action with Owner's approval is necessary to remove the lien, encumbrance, or charge, provided, however, that this obligation on Hyatt shall not be deemed to require Hyatt to expend funds except on behalf of Owner.

6.3 Owner's Additions.

Owner shall have the right, subject to as little interference with the operation of the Hotel as possible, from time to time during the Term to make major

changes to the structure of a capital nature and to make alterations, additions or improvements in or to the Hotel. The plans and specifications for any such alterations, additions or improvements shall be submitted to Hyatt for its prior approval, which approval will not be unreasonably withheld. The funds for any such major repairs to the structure, alterations, additions or improvements shall be supplied by Owner and the amount thereof shall constitute the basis for an addition to the Project Cost as and when expended, unless Hyatt and Owner shall otherwise agree.

6.4 Required Changes.

In the event that at any time during the Term structural repairs to or changes in the Building shall be required by reason of any laws, statutes, ordinances, governmental rules now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority or officer, Owner may, but shall not be obligated to, make and pay for such repairs or changes and the amount of the cost thereof shall constitute the basis for an addition to the Project Cost. Structural repairs or changes shall be made with as little hinderance to the operation of the Hotel as possible. In the event that Owner should elect not to make the structural repair or change required under this Section 6.4, Owner shall have the right to terminate the operation of the Hotel, and this Agreement shall terminate, and Prudential shall have no liability to Hyatt due to its decision to terminate operation of the Hotel and this Agreement pursuant to this Section 6.4. If Owner shall elect to reopen the Hotel within two (2) years of the date of the aforesaid termination of this Agreement, Owner shall then

notify Hyatt of its intent to reopen the Hotel and Hyatt then shall have the first right to manage the Hotel, provided that such management shall be under the same terms and conditions as contained in this Agreement. Hyatt shall notify Owner within thirty (30) days of receipt of the aforesaid notice from Owner, whether or not Hyatt will manage the Hotel pursuant to the terms and conditions of this Agreement.

Section 7. General Covenants of Hyatt and Owner.

7.1 Working Capital.

Except as otherwise in this Agreement specifically provided, Owner shall, on the Opening Date and at all times during the Term, cause sufficient working capital funds to be on hand in the operating accounts to assure the timely payment of all current liabilities of the Hotel and all other items entering into the calculation of Gross Operating Profit, the uninterrupted and efficient operation of the Hotel at all times during the Term and the performance by Hyatt of its other obligations hereunder.

As of any date Owner shall be deemed to have met its obligation under the foregoing provisions of this Section 7.1 if the working capital then on hand in the operating accounts, as determined in accordance with generally accepted principles of accounting, shall equal or exceed the sum of \$100,000.00, or such other amount as shall be agreed upon in writing between the parties hereto (such sum of \$100,000.00 or other amount so agreed upon being herein called the "Working Capital Standard"). The amount of working capital may be increased to meet seasonal bills upon

the written approval of Owner. The parties agree from time to time to review and, if necessary, adjust the Working Capital Standard in accordance with then existing or anticipated conditions affecting the business of the Hotel.

7.2 Chain Services.

Hyatt shall provide, or shall cause its affiliates to provide, in connection with the operation and for the benefit of the Hotel, those group benefits, services and facilities (hereinafter called the "Chain Services") generally made available by Hyatt from time to time during the Term to hotels (which term, as used herein, does not include Hyatt Lodges or any hotel not operated under a name which includes the word "Hyatt") operated by Hyatt or its affiliates. Chain Services presently consist of (i) convention, business and sales promotion services (including the maintenance and staffing of Hyatt's home office sales force and of regional sales offices in various parts of the United States and the world), (ii) advertising, publicity and public relations services, (iii) food and beverage, personnel and other operational departmental supervision and control services, (iv) centralized reservations services in Omaha, Nebraska, and (v) the making available of qualified personnel through the Hyatt employee training program. Neither Hyatt nor any of its affiliates shall charge or receive any profit in respect of any such Chain Services. Hyatt shall, however, be entitled to charge the operation of the Hotel and to be reimbursed for the Hotel's prorata share of "Allocable Chain Expense." "Chain Expense" for any period shall include all costs incurred during such period by Hyatt or by any of its affiliates in respect of Chain Services, other than the

costs of food and beverage, personnel and other operational departmental supervision and control services. "Allocable Chain Expense" for any period shall mean all Chain Expense incurred during such period, reduced by any amounts which Hyatt or any of its affiliates shall be entitled to be paid in respect of Chain Services furnished during such period to hotels which are situated outside of the United States (whether or not opened to the public) or which are situated in the United States but are not opened to the public (for the reason that they are under construction or are otherwise being prepared for opening). The Hotel's prorata share of Allocable Chain Expense for any period shall bear the same ratio to the Allocable Chain Expense for such period as the number of guest rooms in the Building bears to the average number of guests rooms in all hotels in the United States opened to the public and operated during such period by Hyatt or its affiliates. Each time that Hyatt shall charge the operation of the Hotel for its prorata share of Allocable Chain Expense for any period, it shall furnish to Owner a statement in reasonably sufficient detail to provide Owner with data supporting such charge. Owner may, in connection with any such statement for any period, cause an audit to be made of the books and records of Hyatt and its affiliates relating to the data furnished in such statement, including, without limitation, the Chain Expense and Allocable Chain Expense incurred during such period and the average number of key guest rooms during such period in hotels opened to the public and situated in the United States and operated by Hyatt or its affiliates. Such audit shall be made by Owner's auditors and a copy of such audit shall be furnished to

Hyatt. If the audit of any such statement shall disclose that such statement is inaccurate, appropriate adjustment shall be made as between Owner and Hyatt to correct such inaccuracy, and, if such audit shall disclose that the charge made to the Hotel for the period covered by such statement exceeds, by five percent (5%) or more, the amount of the charge which should have been made, then Hyatt shall pay for the reasonable cost of such audit; otherwise, Owner shall pay for the cost of such audit.

7.3 Right of Inspection and Review.

Hyatt shall accord to Owner or the Ground Lease Landlord and their duly authorized agents the right to enter upon any part of the Hotel at all reasonable times during the Term for the purpose of examining or inspecting the Hotel or examining or making extracts from the books and records of the Hotel operation, or for any other purpose which Owner or the Ground Lease Landlord, in their discretion, shall deem necessary or advisable, but the same shall be done with as little disturbance to the operation of the Hotel as possible.

7.4 Financial Reports and Audit.

Hyatt shall keep at the Hotel complete, accurate and separate books of account and other records reflecting the results of the operation of the Hotel. Such books and records (excluding work papers and other back-up after two years unless Owner shall have required their retention after two years) shall be retained permanently at the Hotel and shall not be discarded without the approval by Owner. Such books and records shall, except as otherwise specified in this Agreement, be kept in all material respects

in accordance with generally accepted accounting principles consistently applied.

(a) Hyatt shall deliver to Owner, within twenty (20) days after the end of each calendar month, an unaudited financial statement prepared from the books of account maintained by Hyatt and containing (i) a statement of the current assets and current liabilities of the Hotel as of the end of such calendar month, (ii) a profit and loss statement showing the results of operation of the Hotel including store rentals for such calendar month and for the Cumulative Period in respect of such calendar month, as well as for the corresponding periods in the immediately preceding year of operation, (iii) a statement of the Gross Receipts for such calendar month and such Cumulative Period, showing the gross income from the rental of rooms, as well as for the corresponding periods in the immediately preceding year of operation, and (iv) a report comparing actual income and expenses to forecast income and expenses. The statements provided shall contain sufficient detail as specified by the Owner to show a computation of revenue; Gross Operating Profit; and the tentative monthly installment of Hyatt's Basic Fee; as well as a statement of the amount of Working Capital as of the end of such month; a statement of the disbursements and balances in the Reserve Account, or if the Reserve Account is not funded, an itemized statement of additions to Furnishings and Equipment and to Capital Improvements made during the calendar month; and a report of Accounts Receivable (Aging). Additionally, Hyatt shall provide Owner with copies of all utility bills; all repair and maintenance bills, including, but not limited to

those for HVAC, plumbing, and electrical maintenance and repair; and such invoices as Owner may from time to time request, for the calendar month.

(b) Owner shall have the right to audit the books of Hyatt's operation of the Hotel at any time, with its internal auditors, and/or independent auditors, at Owner's sole discretion. If Owner is required under the Ground Lease to provide certified financial statements to the Ground Lease Landlord, then Owner shall have the right to have accountants of its choice audit the books of operation of the Hotel at any time. The cost of any audit hereunder shall be charged against the Hotel's operating expenses.

(c) Hyatt shall in good faith prepare and submit to Owner on or before November 1st of each year the following: (1) an annual budget to forecast in detail its proposed operation for the forthcoming fiscal year together with an itemization of its projected revenues, and all expenses of operation of every nature and kind anticipated to be charged to the operation, and in particular those types of expenses referred to in this Agreement for such fiscal year, (2) an annual detailed capital budget for expenditures from the Reserve Account, whether the same be funded or not, in format acceptable to Owner, and (3) an annual marketing plan. The budgets and marketing plan will be subject to the approval of the Owner, and Owner hereby agrees to examine each budget submitted to it by Hyatt in accordance with the foregoing, and if found reasonable and proper, Owner will then approve such budget, it being contemplated that the budgets will be agreed upon by the parties hereto within 30 days after submission of the same by Hyatt to

Owner. In case of a dispute with regard to a budget, then, pending the settlement thereof, Hyatt will be entitled to continue to operate the Hotel in accordance with the standards herein set forth at levels of expenditure comparable to those of the preceding year, and in connection therewith to make such expenditures from Owner's funds as it reasonably deems necessary for such continued operations, it being understood, however, that in such cases Hyatt shall be entitled to make expenditures for repairs and maintenance, and for replacement of Furnishings and Equipment, for the current fiscal year on the basis of annual expenditures in an amount not exceeding five percent (5%) of the estimated Gross Revenue of the Hotel for the then current fiscal year (determined in accordance with the Current Uniform System).

(d) Hyatt shall provide Owner with copies of its policies regarding Hyatt operational standards solely for informational purposes and not for approval by Owner, so that Owner may evaluate the reports and budgets required by the foregoing subparagraphs. As these policies are revised, Hyatt shall provide Owner with copies of the revisions.

7.5

Payment of Taxes.

Owner shall remit, prior to delinquency, all ad valorem taxes and assessments (levied on both real and personal property) which may become a lien upon all or any part of the Hotel and which may become due and payable during the Term, unless payment thereof is in good faith being contested by Owner. The reasonable expenses of any such contest shall be deductible in computing Adjusted Profit for the period in which incurred. Any such taxes or assessments which relate to a

period which includes the dates on which the Term commences or expires or otherwise terminates shall be equitably prorated as of such dates. If Hyatt should receive notice of any taxes due, it shall immediately forward said notice to Owner. Any penalties, interest, and any other damage resulting from failure by Hyatt to forward such notices shall be paid by Hyatt.

7.6 Indemnification by Hyatt.

To the extent that Owner shall not be fully covered by insurance, Hyatt shall indemnify Owner and hold it harmless from any damages, liability, cost, claim or expense, including attorneys' fees, arising out of or in connection with the operation of the Hotel or Hyatt's operations other than at the Hotel. The costs of such indemnity shall be borne as follows:

(a) if the damage, liability, cost, claim or expense is attributable to Hyatt's gross negligence, willful misconduct, willful violation of any Legal Requirements or breach of this Agreement (other than Hyatt's covenant to comply with the Legal Requirements), the cost of such indemnification shall be borne solely by Hyatt and shall not be charged against Gross Operating Profit;

(b) if the damage, liability, cost, claim or expense is attributable to any other reason or cause, the cost of such indemnification shall be paid by Hyatt out of the operating accounts and may be charged against the Gross Operating Profit;

7.7 Indemnification of Hyatt.

Upon termination of this Agreement, whether by lapse of time or otherwise, Owner shall indemnify and hold harmless Hyatt and its directors, officers, employees and

agents from and against any and all liability, loss, damages, costs and expenses arising out of, or incurred in connection with, the management and operation of the Hotel except to the extent that the same were caused by the gross negligence, willfull misconduct, willful violation of Legal Requirements or willful breach of this Agreement by Hyatt (other than compliance with Legal Requirements). The amount of any such indemnity shall be adjusted to reflect the impact, if any, on Hyatt's Annual Management Fee.

SECTION 8.

INSURANCE.

8.1 Owner's Coverage. Owner agrees to procure and maintain at all times during the term of this Agreement the following insurance:

(a) All risks, including earthquake and flood, property insurance in an amount equal to full replacement value on the Hotel and FF&E. Business Interruption and Extra Expense, as well as Rental Value coverage shall be included.

(b) Comprehensive boiler and machinery coverage including direct damage, Business Interruption and Extra Expense in an amount not less than \$25,000,000.00. With respect to the coverages specified in subparagraphs (a) and (b) of this Section 8.1, property losses up to \$10,000 per occurrence will be paid out of the Operating Accounts.

(c) Comprehensive General Liability insurance including bodily injury, personal injury, property damage, product liability, innkeeper's liability (including theft), contractual liability, and liquor liability in an amount not less than \$1,000,000.00 combined single limit with a \$25,000,000.00 umbrella. Hyatt Corporation shall be named as an additional insured under this coverage.

8.2

Hyatt Coverage.

Hyatt agrees to procure and maintain at all times during the term of this Agreement, a minimum of the following insurance:

(a) Worker's compensation and Employer's Liability coverage in compliance with the statutes of the state of Virginia. The cost of this insurance shall be reimbursed to Hyatt from the Operating Account as set forth in Section 3.4. It is understood that Hyatt, the law permitting, intends to self-insure for worker's compensation insurance and such self-insurance shall comply with Section 8.8.

(b) Comprehensive crime insurance covering all of Hyatt's employees in an amount not less than \$500,000.00. It shall include a \$500,000.00 employee fidelity limit of liability, \$500,000.00 broad form money and securities and \$500,000.00 depositor's forgery. Each loss shall be subject to a \$5,000.00 deductible. The cost of this insurance shall be reimbursed to Hyatt from the Operating Account as provided in Section 3.4 hereof, but only to the extent that such insurance is applicable to employees of Hyatt actually employed at the Hotel.

8.3

Subcontractor's Insurance.

Hyatt shall require that all subcontractors brought onto the Property have insurance coverage at the subcontractor's expense, in the following minimum amounts:

(a) Worker's Compensation - Statutory Amount.
Employer's Liability - not less than \$250,000.

(b) Comprehensive General Liability including Bodily Injury, Personal Injury, Property Damage, Products Liability and Contractual Liability; not less than \$1,000,000.00 combined single limit.

Hyatt must obtain the Owner's permission to waive any of the above requirements. The Manager shall obtain and keep on file a Certificate of Insurance which shows that the subcontractor is so insured.

8.4 Blanket Insurance.

Any insurance provided by Owner or Hyatt under this Article 8 may be affected under policies of blanket insurance which may cover other properties of Owner and The Prudential Insurance Company of America and its affiliates, and Hyatt Corporation and its affiliates, and an allocable portion of such premiums will be charged to the Hotel.

8.5 Waiver of Subrogation.

Landlord's policies with respect to the coverage provided in Section 8.1 (a) and (b) hereof shall contain a waiver of subrogation with respect to Hyatt and any property or business interruption insurance obtained by Hyatt shall contain a waiver of subrogation with respect to Owner and the Ground Lease Landlord.

8.6 Compliance.

Hyatt agrees to comply with, fulfill and perform all rules, orders, ordinances, regulations and requirements, imposed by, or in connection with, or affecting the premiums for, policies of insurance upon the Hotel, and relating to the use of the Hotel by Hyatt, tenants or any other person. If Hyatt shall fail to comply with, fulfill and perform any such rules, orders, ordinances, regulations or requirements, Owner may, but shall be under no obligation to, comply with, fulfill and perform the same and Hyatt shall reimburse Owner for any and all sums expended by it therefor.

8.7 Insurance Requirements.

All insurance policies contemplated by this Section 8 shall conform to the following requirements:

(a) Hyatt shall not, on Hyatt's own initiative or pursuant to the request or requirement of any third party, including any lease-hold mortgagee or any sublessee, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section 8, to be furnished by, or which may reasonably be required to be furnished by Owner, or increase the amounts of any then existing insurance required to be secured by Hyatt pursuant to Section 8.2 hereof by securing an additional policy or additional policies, without the prior written Consent of Owner. All policies obtained by Hyatt pursuant to this Agreement shall comply with the requirements set forth in this Section 8.7.

(b) Provisions as to acceptable insurance companies and evidence of the policies being in force, as follows:

(1) All insurance provided for in this Section 8 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the state wherein the Real Property is located and which have been approved in writing by the Ground Lease Landlord as to the qualification of insurers and the amounts of insurance to be written by each.

(2) Upon execution of this Agreement and not less than (30) days prior to the expiration dates of the expiring policies theretofore furnished by Hyatt pursuant to this Section 8, originals of the policies, or certificates thereof, shall be delivered by Hyatt to Owner. Owner will furnish to Hyatt certificate of Comprehensive General Liability insurance described in Section 8.1 (c).

(c) Named insured and loss payable provisions in the crime and fidelity insurance shall, to the extent possible, name Hyatt, Owner, and Ground Lease Landlord as the insureds as their respective interest may appear.

(d) Each policy or certificate of insurance in this Article 8 mentioned and required, shall have attached thereto (a) an endorsement that such policy shall not be cancelled nor materially changed without at least thirty (30) days' prior written notice to Owner, Ground Lease Landlord, and leasehold mortgagee, any fee mortgagee and to any sublessee who shall have previously requested such notice, or to any other additional insured, (b) an endorsement to the effect, that the insurance as to any one insured shall not be invalidated by any act or neglect to any other insured, and, if possible (c) an endorsement pursuant to which the insurance carrier waives all rights of subrogation to the interest of any leasehold mortgagee or fee mortgagee.

(e) Hyatt shall, upon request, furnish to Owner insurance appraisals of the full insurable value of the Improvements and FFE. The expense of such appraisal, if any, shall be allocated in the same manner as the expense for the property insurance premiums.

8.8 Hyatt Self-Insurance.

Owner understands that Hyatt customarily and in the course of managing the hotels in its chain, self-insures and assumes the risk of certain losses and liabilities and places certain coverage with an affiliated insurance carrier. Subject to the next succeeding paragraph, and provided Hyatt has not assigned this Agreement to any other entity, Owner agrees that Hyatt may, in submitting the Hyatt bid, be a self-insurer of all or any of the risks described in this Section 8, or may place coverage with such affiliated carrier, so long as such self-

insurance or coverage is consistent in type and amount with Hyatt's self-insurance or coverage practices at other hotels, and further provided that such self-insurance or coverage with such affiliated carrier is in compliance with all applicable statutes, regulations and laws of the Commonwealth of Virginia or any other governmental entity having jurisdiction over the Hotel.

In the event that Hyatt self-insures, it will carry insurance, in customary amounts, above the self-insured deductibles protecting Owner, the Ground Lease Landlord and Hyatt. Owner and the Ground Lease Landlord shall be named as additional insureds as their interest may appear in said policies. Owner shall have the right on an annual basis to review the loss experience of this hotel against the self-insured deductibles, and if the premiums for first dollar coverage for the self-insured deductibles under either of the coverages required by this Section 8 shall be less than the loss experience charged against the hotel by virtue of the herein permitted self-insurance, then Owner may require Hyatt to obtain full insurance coverage for crime and employee theft or for workmen's compensation in accordance with the other provisions of this Section 8.

Section 9. Damage to and Destruction of Hotel.

9.1 Owner's Duty of Restoration.

If the Hotel, or any portion thereof, shall be be damaged or destroyed at any time or times during the Term by fire or any other casualty, Owner, at no expense or risk to Hyatt, shall, subject to Owner's right to demolish and rebuild the building under Section 11.02(a) of the Ground Lease, repair, rebuild or replace the same (such repairing, rebuilding or replacing being hereinafter called "restoration") so that after such restoration the Hotel shall be substantially the same as prior to such damage or destruction, and all proceeds of insurance shall be made available to Owner for this purpose in accordance with Ground Lease Article 16 to ensure that such proceeds of insurance shall be applied to such restoration. If the cost of such restoration exceeds available proceeds of insurance,

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such excess, when paid, shall constitute an addition to Project Cost as provided in Section 4.1(e)(2).

9.2 Owner's Election Not to Restore.

Anything in Section 9.1 to the contrary contained notwithstanding, in connection with any casualty, if the cost of restoring the Hotel shall equal or exceed (i) twenty-five percent (25%) of the initial investment thereof immediately prior to such casualty should such casualty be covered by insurance, or (ii) ten percent (10%) of such replacement cost should such casualty not be covered by insurance, or if Owner has exercised its right in Section 11.02(a) of the Ground Lease to demolish and rebuild the building, then, and in either event, Owner may terminate this Agreement by giving notice to Hyatt within forty-five (45) days from the occurrence of such casualty; without paying additional fees or penalties to Hyatt.

Section 10. Condemnation.

10.1 This Agreement shall terminate as of the effective date of the occurrence of any of the following events:

(a) The whole of the Improvements and the Land be taken or condemned by reason of any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use or purpose, no matter how temporary the period of the use (all of the foregoing actions hereinafter called a "Taking"); or

(b) Such a portion of the Improvements and the Land be taken or condemned as to make it imprudent

or unreasonable, in the sole discretion of Owner, to use the remaining portion as a hotel of the type and class as existed immediately preceding such Taking; or

(c) Owner exercises its option under Section 17.02(b) of the Ground Lease to terminate the Ground Lease if such a portion of the Improvements and the Land be taken as the remaining portion cannot be so repaired or reconstructed as to constitute a complete rentable structure capable of producing net annual income after deducting Operating Expenses bearing approximately the same ratio to estimated value of the remaining portion after restoration, repair or construction as the net annual income after deducting Operating Expenses produced by the Improvements and Land immediately prior to the Taking bore to the value of the Improvements and Land immediately before the Taking, and Owner shall then have no liability to compensate Hyatt for any loss of earnings as a result of such termination.

10.2 The average net annual income produced by the Improvements and Land during the five year period immediately preceding such Taking, shall be deemed to constitute the actual net annual income immediately prior to the Taking for the purposes of Section 10.1. As used in this Section, the term "Operating Expenses" shall be deemed to exclude depreciation, income taxes, franchise taxes, and interest and amortization of any leasehold mortgage shall be deemed to include, but without limitation, all Ground Rent.

10.3 Hyatt shall have no interest whatsoever in any award for such Taking, whether such award be as compensation or diminution in value of the Improvements and Land. Further, Hyatt shall have no right to defend against

any such Taking or sue for or appeal from any such award, and, in the exercise of such right, to compromise and settle any such action or award.

10.4 Hyatt shall continue to operate the Hotel under this Agreement and to perform all of its obligations under this Agreement until such time as Hyatt shall be required to surrender possession of the Improvements and Land as a consequence of such Taking, but not thereafter, although any liability of Hyatt or Owner under this Agreement shall survive such surrender.

10.5 If only a part of the Improvements and Land shall be taken or condemned and the Taking or condemnation of such part does not make it unreasonable or imprudent in the sole discretion of Owner, to operate the remainder as a hotel of the type and class immediately preceding such Taking or condemnation, this Agreement shall not terminate, but Owner shall repair any damage to the Improvements, or any part thereof, or shall alter or modify the Improvements, or any part thereof, so as to render the Improvements a complete and satisfactory architectural unit as a hotel of the same type and class immediately preceding the Taking or condemnation.

Section 11. Events of Default; Termination Rights.

11.1 Events of Default.

If at any time, or from time to time, during the Term any of the following events of default (each being hereinafter called an "Event of Default") shall occur and not be remedied within the periods of time hereinafter specified, namely:

(a) The failure of Hyatt or Owner to pay any sum which may become due hereunder within fifteen (15) days after of a notice specifying such failure; or

(b) If Hyatt shall apply for or consent to the appointment of a receiver, trustee or liquidator of Hyatt or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Hyatt in any bankruptcy, reorganization or insolvency proceeding, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Hyatt a bankrupt or insolvent or approving a petition seeking reorganization of Hyatt or appointing a receiver, trustee or liquidator of Hyatt or of all or a substantial part of its assets; or

(c) If Hyatt or Owner shall fail to perform, keep or fulfill any of the other covenants, undertaking, obligations or conditions of this Agreement, and any such default shall continue for a period of (1) five (5) days in case of abandonment or vacation by Hyatt and thirty (30) days in case of some other default or (2) such additional time as may be reasonably required to cure such default, other than abandonment or vacation, provided Hyatt or Owner commences action to cure such default within thirty (30) days and thereafter continues diligently to cure such default; then in the case of any such Event of Default, Owner or

Hyatt, as the case may be, may, in addition to any other rights or remedies which it may have at law or in equity, immediately or at any time thereafter, unless and until such default and all intervening defaults shall be remedied, by notice to the other party declare this Agreement to be terminated, in which event the Term and all right, title and interest of Hyatt hereunder shall expire on the date such notice is received by Hyatt as fully and completely as if that day were the date herein specifically fixed for the expiration of the Term, and Hyatt will thereupon cease to manage and operate the Hotel.

Section 12.

Trade Name.

During the Term the Hotel shall at all time be known and designated as "Hyatt Arlington" except as may otherwise be mutually agreed upon by Owner and Hyatt. Hyatt represents and warrants to Owner that Hyatt has the legal right to use the name "Hyatt" (hereinafter called the "protected name"), either alone or in conjunction with another word or words, which legal right includes the right to call the Hotel "Hyatt Arlington". Owner acknowledges that the protected name, when used either alone or in conjunction with any other word or words, is the exclusive property of Hyatt. Accordingly, Owner agrees that no right or remedy of Owner for any default of Hyatt hereunder, nor the delivery of possession of the Hotel to Owner upon the expiration or sooner termination of the Term, nor any provision of this Agreement, shall confer upon Owner, or any transferee, assignee or successor of Owner, or any person, firm or corporation claiming by or through Owner, the right to use

either of the protected names, either alone or in conjunction with any other word or words, in connection with the use or operation of the Hotel or otherwise. In the event of any breach of this covenant by Owner, Hyatt shall be entitled to relief by injunction, and in the case of deliberate breach to damages and to all other available legal rights or remedies, and this provision shall be deemed to survive the expiration or sooner termination of the Term. Nothing herein is to be construed as inferring that Owner guarantees against the action of its transferees or assigns.

Section 13.

Successors and Assigns.

13.1

Assignment by Hyatt.

Hyatt shall have the right to assign its rights and obligations under this Agreement, without the consent of Owner (a) to any affiliate of Hyatt which does not operate gaming tables or any other form of gambling or (b) to any assignee which does not operate gaming tables or any other form of gambling who also acquires all, or substantially all, of the assets of Hyatt and assumes its obligations, including those hereunder, such assignee under these clauses (a) and (b) shall after such assignment operate, directly or through affiliates, hotels under a name which includes the word "Hyatt" containing an aggregate of at least 10,000 key guest rooms, and shall immediately prior to such acquisition have a net worth at least equal to that of Hyatt at such time (both of the foregoing assignments being hereinafter referred to as "permitted assignment"). In the event of a permitted assignment to a person other than an affiliate, Hyatt's liability except for any claims by Owner arising

prior to the effective date of such assignment hereunder shall terminate upon such assignment, but in the event of such an assignment to an affiliate Hyatt shall continue to be liable under this Agreement to the same extent as though such assignment had not been made. Except as hereinabove provided, Hyatt shall not assign its rights and obligations under this Agreement without the approval of Owner. In the event that Hyatt shall assign its rights and obligations under this Agreement to any affiliate (the "assignee affiliate"), as hereinbefore provided, then the sale by Hyatt or by an affiliate of a controlling interest in such assignee affiliate shall constitute an assignment of Hyatt's interest requiring Owner's approval, as provided in the immediately preceding sentence, except for a sale which is part of a sale of all, or substantially all, of the assets of Hyatt to an assignee who assumes its obligations, including those hereunder and which, if a direct assignment of this Agreement were involved, would qualify as a permitted assignment under clause (b) above (in which case, any contingent liability of Hyatt hereunder shall terminate upon such sale). A "controlling interest" in an affiliate refers to shares of capital stock representing more than fifty percent (50%) of the voting power of such affiliate.

It is understood and agreed that any approval given by Owner to any assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case. Any assignee who succeeds to the interest of Hyatt hereunder (or to the interest of an assignee of Hyatt hereunder) shall be deemed to be Hyatt hereunder for all purposes. The term "affiliate", as used

herein, shall mean a corporation included in an "affiliated group", as that term is defined in Section 1504(a) of the Internal Revenue Code as presently in effect, and of which Hyatt is the common parent corporation. The term "assignment" as used herein shall include a merger, consolidation or similar transaction.

13.2 Assignment by Owner.

Owner shall have the right to sell, lease, mortgage, hypothecate or convey the Hotel subject to this Agreement or to assign this Agreement, or both, without — the approval of Hyatt, and Hyatt agrees to cooperate with — Owner in connection with any such transaction and Hyatt shall attorn to such buyer, lessee, mortgagee or assignee, provided, however, that any buyer, lessee, mortgagee, or assignee shall expressly assume in writing the obligations of Owner hereunder. Owner shall have no liability under this Agreement after the date of any sale, lease, assignment, or conveyance of the Hotel, except for Owner's obligations hereunder arising prior to the date of assignment. With respect to any mortgagee, Owner shall furnish Hyatt with an address where notice may be served upon such mortgagee. Hyatt agrees that simultaneously with the giving to Owner of any notice of default or termination hereunder it will concurrently send a copy of such notice to any such mortgagee, and no notice to Owner of any default or termination hereunder shall be effective unless a copy of such notice has been sent to any such mortgagee as herein provided. Hyatt further agrees that it shall not exercise any right of termination in connection with such default, if, within the grace period provided, mortgagee shall give Hyatt notice of its intention

to cure such default and shall proceed diligently to do so.

13.3 Effect of Assignment.

The terms, provisions, covenants, undertakings, agreements, obligations and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the parties hereto with the same effect as if mentioned in each instance where the party hereto is named or referred to, except that no assignment, transfer, pledge, mortgage or sublease by or through Hyatt or any sublessee or by or through Owner, as the case may be, in violation of the provisions of this Agreement, shall vest any rights in the assignee, transferee, mortgagee, pledgee, sublessee or occupant.

Section 14. Notices.

All notices to be given hereunder shall be given in writing and shall be deemed given when delivered by messenger or by the U.S. mails, with postage prepaid, registered or certified, and, delivered or addressed as follows:

OWNER: The Prudential Insurance Company of
 America
 Capital Real Estate Investment Office
 Suite 400
 1150 - 17th Street, N.W.
 Washington, D.C. 20036
 Attention: Regional Vice President,
 Real Estate Operations

With a copy of said notice sent to each of the following:

 The Prudential Insurance Company of
 America
 Prudential Plaza
 Newark, New Jersey 07101
 Attention: Mr. Allen Ostroff
 Vice President

The Prudential Insurance Company of
America
Capital Real Estate Investment Office
Suite 400
1150 - 17th Street, N.W.
Washington, D.C. 20036
Attention: Regional Counsel,
Real Estate Operations

HYATT:

Hyatt Corporation
~~9701 West Higgins Road~~
Rosemont, Illinois 60018
Attention: Harold S. Handelsman, Esq.

Either party hereto may change the address for notices hereunder by such party giving notice of such change to the other party hereto in the manner hereinabove provided. If Hyatt is given the name and address of any mortgagees, it will give copies of all notices given to Owner to such mortgagees, in the manner set forth in this Section 14.

Section 15.

Applicable Law.

This Agreement shall be governed in all respects by the laws of the State of Virginia.

IN WITNESS WHEREOF, Owner and Hyatt have executed this Agreement as of the day and year first above set forth.

ATTEST:

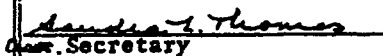

Assistant Secretary

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, a New Jersey corporation

By: 
Vice President



ATTEST:


Secretary

HYATT CORPORATION, a Delaware
corporation

By: 
President

EXHIBIT A

BEGINNING at the intersection of the westerly line of N. Ft. Myer Drive with the northerly right-of-way line of Wilson Boulevard; thence running with the northerly right-of-way line of Wilson Boulevard S. 82 degrees 49' W. - 275.68 feet to its intersection with the easterly right-of-way line of N. Nash Street; thence running with said easterly right-of-way line of N. Nash Street along the following courses and distances: N. 1 degree 16' 00" W. - 58.71 feet and N. 14 degrees 02' 00" E. - 94.34 feet to a point, said point being a corner common to Lot 9 and Lot 10 of the Subdivision of Arlington Plains; thence departing from said street line and running with the side line common to Lot 9 and Lot 10 of the Subdivision of Arlington Plains, N. 89 degrees 25' 00" E. 250.75 feet to a point, said point lying in the aforementioned westerly right-of-way line of N. Ft. Myer Drive; thence running with said westerly right-of-way line of N. Ft. Myer Drive, S. 0 degrees 35' 00" E. - 118.32 feet to the point of beginning containing 35,739 square feet of land.

SUBJECT, however, to easements, rights-of-way and restrictions of record.



RESOLVED, that the Hotel Association of New York City adopts and recommends to the hotel fraternity the Uniform System of Accounts for Hotels as submitted by the Accountants' Committee; and it is further

RESOLVED, that such Uniform System of Accounts for Hotels be copyrighted in the name of this Association.

March, 1926



RESOLVED, that the American Hotel Association of the United States and Canada adopts the Uniform System of Accounts for Hotels as recommended by the Hotel Association of New York City, September, 1926.

(Now operating as the American Hotel & Motel Association).

Exhibit B - Page 1

**UNIFORM SYSTEM
OF
ACCOUNTS FOR HOTELS**

[Sixth Revised Edition]

Ninth Printing
1974

PRICE \$5.50

HOTEL ASSOCIATION OF NEW YORK CITY, INC.
141 WEST 51ST STREET, NEW YORK, N. Y. 10019

Exhibit B - Page 2

P30003175

Exhibit 1; Page 108

COPYRIGHTED BY THE HOTEL ASSOCIATION OF NEW YORK CITY, INC., 1961, IN
THE UNITED STATES AND DOMINION OF CANADA.

Printed in the United States of America
SCOTT, PETERSON CORPORATION, NEW JERSEY

[iv]

Exhibit B - Page 3

PREFACE

The first edition of the Uniform System of Accounts for Hotels was prepared during the latter half of 1925 and the early days of 1926 by a designated group of accountants for the Hotel Association of New York City. It represented the first successful organized effort in the hotel business to establish a uniform system of cost accounts. The general scheme was in line with the best thought of hotel accountants, and subsequent revisions have been confined chiefly to simplifying and clarifying.

The Uniform System of Accounts for Hotels is in fact a manual of instructions for preparing standard financial statements and schedules of the various operating and productive units which make up a hotel. It serves two purposes: first, it provides a simple formula for the classification of accounts that may be adopted by any hotel regardless of size or type, and second, through the use of a standardized uniform method of presenting financial results of operations, it makes comparisons possible among several hotels or groups of hotels.

The manual was prepared in a form adaptable to all hotels, large or small, including the European plan, American plan, apartment and resort types. In order to do this it was necessary to provide for the peculiarities of each; consequently, the accounts and classifications given will not apply in full to any one hotel. Each hotel should select the schedules and accounts that are required for its use, and eliminate such as are not required. Certain hotels may have items of income or expense of a nature not provided for herein, in which case the required accounts should be included in the proper departmental schedules. Likewise, certain hotels may operate income-producing departments for which no provision has been made, in which case the required accounts should be kept under appropriate titles, and departmental names, in the same general form prescribed for the other departments.

All members of the original Committee, appointed by the Hotel Association of New York City to prepare a Uniform System of Accounts for Hotels, deserve commendation for their untiring devotion to the completion of this task. The personnel of these Committees were as follows:

Proprietors' Committee

E. M. STAYLER, Chairman—Hotel Pennsylvania

L. M. BOOMER—The Waldorf-Astoria	JULIUS MANGER—Hotel Times Square
I. FLUGELMAN—12 East 86th Street	FRED A. MUSHENBROOK—Hotel Astor
DAVID H. KNOTT—Hotel Albert	CHARLES G. STAMM—Hotel Willard
ARTHUR L. LEE—Hotel McAlpin	GEORGE W. SWEENEY—The Commodore

[v]

Exhibit B - Page 4

Exhibit
Page:STATEMENT OF INCOME
(Short Form)

DEPARTMENTAL PROFIT (LOSS)

	Schedule B-1	Cure Perk
Rooms	B-1	\$
Food	B-2	
Beverages	B-2	
Telephone	B-3	
Barber Shop	B-4	
Beauty Parlor	B-5	
Checkrooms and Washrooms	B-6	
Cigar and Newsstand	B-7	
Fountains and Gift Shop	B-8	
Garage—Parking Lot	B-9	
Guest Laundry	B-10	
Swimming Pool—Cabana—Baths	B-11	
Valet	B-12	
Profit from Operated Departments		\$
Other Income	B-13	
GROSS OPERATING INCOME		\$
DEDUCTIONS FROM INCOME		
Administrative and General Expenses	B-14	\$
Advertising and Sales Promotion	B-15	
Heat, Light and Power	B-16	
Repairs and Maintenance	B-17	
Total Deductions from Income		\$
HOUSING PROFIT		\$
STORE RENTALS	B-18	\$
GROSS OPERATING PROFIT		\$
RENT, MUNICIPAL TAXES AND INSURANCE	B-19	
PROFIT BEFORE INTEREST AND DEPRECIATION		\$
INTEREST	B-19	
PROFIT BEFORE DEPRECIATION		\$
DEPRECIATION AND EXPENSE AMORTIZATION	B-19	
NET OPERATING PROFIT (LOSS)		\$
OTHER ADDITIONS AND DEDUCTIONS	B-20	
NET INCOME (LOSS)—TO RETAINED EARNINGS		\$

NOTES: Various arrangements of additional columns for comparisons and percentages are illustrated on pages 96-99.
It is suggested that when the "short form" as shown herewith is used that a supplementary schedule of Revenue and Expenses be prepared as outlined in Exhibit B, page 2, herewith.

[12]

Exhibit B - Page 5

Exhibit B
Page 2

CONDENSED STATEMENT OF REVENUE AND EXPENSES

REVENUE	
Rooms	\$
Food	
Beverages	
Telephone	
Store Rentals	
Other Income	
Total Revenue	\$
COSTS AND EXPENSES	
Cost of Goods Sold	
Food	\$
Beverages	
Telephone	
Other	
Total Cost of Goods Sold	\$
Payroll and Related Expenses	
Other Expenses	
Total Costs and Expenses	\$
GROSS OPERATING PROFIT	\$
RENT, MUNICIPAL TAXES AND INSURANCE	
PROFIT BEFORE INTEREST AND DEPRECIATION	\$
INTEREST	\$
PROFIT BEFORE DEPRECIATION	\$
DEPRECIATION AND EXPENSE AMORTIZATION	\$
NET OPERATING PROFIT (LOSS)	\$
OTHER ADJUSTMENTS AND DEDUCTIONS	
NET INCOME (LOSS)—TO RETAINED EARNINGS	\$

[13]

Exhibit B - Page 6

P30003179

Exhibit 1; Page 112

The Prudential Insurance Company of America
Capital Real Estate Investment Office
Suite 400
1150 - 17th Street, N.W.
Washington, DC 20036
Telephone: 202-833-2570

August 5, 1981

Hyatt Corporation
9700 West Bryn Mawr
Rosemont, Illinois 60018
Attn: Harold S. Handelsman, Esquire

Re: I.P. #500
Hyatt Arlington
Arlington, Virginia

Gentlemen:

Section 4.2.2(a) of that certain Management Agreement dated February 19, 1981, by and between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA ("Prudential") and HYATT CORPORATION ("Hyatt"), provides that Hyatt's payment of Basic Fee shall occur monthly "..... by a check in the amount of the tentative monthly installments issued to Hyatt by Owner's Capital Real Estate Investment Office, or its successor in responsibility...".

Without waiving the aforesaid contractual right of Prudential to pay the Basic Fee due under the Management Agreement to Hyatt by check, or in any way releasing or renouncing the right to at any time require the payment of Basic Fee to Hyatt by check as provided in Section 4.4.2(a) as aforesaid, and for purposes of administrative convenience only, Prudential hereby consents to paying Hyatt its tentative monthly installment of Basic Fee by allowing Hyatt to deduct its tentative monthly installment of Basic Fee directly from the operating accounts of the Hotel each month as the same shall become due and payable under Section 4.4.2 of the aforesaid Management Agreement. This authorization shall continue until Hyatt is notified in writing by Prudential of its rescission.

It is hereby agreed and understood that all other terms and conditions of Section 4.2.2 and all other provisions of the aforesaid Management Agreement shall remain and continue in full force and effect.

Hyatt Corporation

-2-

August 5, 1981

Hyatt hereby acknowledges and agrees that the authorization contained in this letter may be revoked at any time by Prudential in its sole and complete right and descretion.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, a New Jersey corporation

By: John C. Hoffman
John C. Hoffman
Vice President

ATTEST:

[Signature]
Assistant Secretary

The undersigned hereby agrees to the terms of the aforesaid letter.

HYATT CORPORATION, a Delaware
corporation

By: Heinz H. Kern
Senior Vice President

ATTEST:

Sandra L. Thomas
Assistant Secretary

DATE: 5/18/81

JCH/SJK/vfh

cc: Ric Cardall
Carol Wilkes
Alan J. Ostroff
Heinz H. Kern
Gus P. Miranda

AMENDMENT NO. 1 TO MANAGEMENT AGREEMENT

THIS AMENDMENT NO. 1 TO MANAGEMENT AGREEMENT (this "Amendment"), is made as of 15th day of June, 1994, by and between **WILSON ARLINGTON COMPANY, A CALIFORNIA LIMITED PARTNERSHIP ("Owner")**, and the **HYATT CORPORATION**, a Delaware corporation ("Hyatt"), with reference to the following facts and objectives:

A. Owner, as assignee of The Prudential Insurance Company of America, and Hyatt are parties to a Management Agreement dated as of February 19, 1981 as amended by a Letter Agreement dated August 5, 1981 (the "Management Agreement"), pursuant to which Hyatt, acting for the account of Owner, has operated and managed a certain hotel located in Arlington, Virginia commonly known as the Hyatt Arlington (the "Hotel").

B. On or about March 21, 1994, Owner filed a petition for reorganization under Chapter 11 of the United States Bankruptcy Code in case No. LA 94-20825VP in the United States Bankruptcy Court for the Central District of California, and Owner has recently sought the dismissal of the case with the consent of its secured lenders.

C. Owner and Hyatt desire to amend the Management Agreement as hereinafter set forth (the "Amendment").

D. In connection with the Amendment, an affiliate of the General Partner of Owner has agreed to assign to Hyatt a limited partnership interest in the Owner. Such assignment is part of the consideration exchanged by the Owner and Hyatt with respect to the modifications contained in the Amendment and, together with the Amendment, constitutes an agency coupled with an interest, as that term is defined by applicable Virginia state law.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Management Agreement.

1.1 Amendment of Section 2.2. The first sentence of Section 2.2 of the Management Agreement is hereby deleted and replaced with the following:

"Prior to January 1, 1999, Owner shall not be entitled to terminate this Agreement other than for cause pursuant to Section 11.1 hereof. From and after January 1, 1999, in addition to any other right of termination under this Agreement, Owner shall have the right to terminate this Agreement without cause by giving to Hyatt a written notice specifying the date of termination, which shall not be earlier than nine (9) months from the first day of the month next succeeding the day of the notice of termination sent by the Owner."

1.2 Amendment of Section 4.1(e). Paragraph (2) of Section 4.1(e) of the Management Agreement is hereby amended to read in full as follows:

"(2) An amount equal to ten percent (10%) of the 'Project Cost' (as hereinafter defined) determined in accordance with generally accepted principles of accounting. The Project Cost as of any date during the Term shall be the "Base Project Cost" of \$21,800,000.00, plus any additions to Project Cost provided for in Sections 5.1(b)(iii), 6.3, 6.4, 9.1 and 10.5 hereof incurred prior to the date of determination of the Project Cost and after January 1, 1994, plus (if the date as of which Project Cost is being determined is on or after January 1, 1995) an amount equal to the aggregate deductions for the immediately preceding fiscal year made under Section 5.1 hereof with respect to the funding of the Reserve Account."

1.3 Amendment of Section 4.2.1. Clause (a) of Section 4.2.1 is hereby amended to read in full as follows:

"(a) Hyatt shall receive a Basic Fee equal to the following:

(i) With respect to 1994, the Fixed Basic Fee for such fiscal year;

(ii) With respect to 1995, the greater of the Fixed Basic Fee for such fiscal year or five percent (5%) of the Gross Operating Profit for such fiscal year; and

(iii) With respect to 1996 and each fiscal year thereafter, the greater of the Fixed Basic Fee for such fiscal year or eight percent (8%) of the Gross Operating Profit for such fiscal year."

1.4 Amendment of Section 4.2.2(b). Section 4.2.2(b) of the Management Agreement shall be amended to read in full as follows:

"(b) With respect to each calendar month included in any such fiscal year, the tentative monthly installment on account of the Basic Fee for that month shall be calculated as follows:

(i) With respect to each calendar month included in fiscal year 1994, the tentative

monthly installment on account of the Basic Fee for that calendar month shall equal \$8,333.33.

(ii) With respect to each calendar month included in fiscal year 1995, the tentative monthly installment on account of the Basic Fee for that calendar month shall equal (x) an amount determined by multiplying \$8,333.33 by the number of months included in the Cumulative Period in respect of such month, or five percent (5%) of the Gross Operating Profit for such Cumulative Period, whichever is greater, less (y) the aggregate amount of the tentative monthly installments having theretofore become payable for such fiscal year on account of such Basic Fee.

(iii) With respect to each calendar month included in fiscal year 1996 or any fiscal year thereafter, the tentative monthly installment on account of the Basic Fee for that calendar month shall equal (x) an amount determined by multiplying \$8,333.33 by the number of months included in the Cumulative Period in respect of that month or eight percent (8%) of the Gross Operating Profit for such Cumulative Period, whichever is greater, less (y) the aggregate amount of the tentative monthly installments having theretofore become payable for such fiscal year on account of such Basic Fee."

1.5 Amendment of Section 4.5 Section 4.5 of the Management Agreement shall be amended to read in full as follows:

(a) "The Owner's Objective for any year is the receipt of net Owner's Remittance Amounts (the total of Owner's Remittance Amounts less Hyatt's Annual Management Fee) equal to ten percent (10%) of the "Performance Test Threshold Amount" (as hereinafter defined). The "Performance Test Threshold Amount" as of any date during the Term shall be an amount equal to the Project Cost as calculated pursuant to paragraph (2) of Section 4.1(e) hereof ~~except that for purposes of this Section 4.5 and the calculation of the Performance Test Threshold Amount, the Base Project Cost shall be \$18,000,000.00 rather than \$21,800,000.00.~~

(b) If the Owner's Objective is not attained for fiscal 1999 and fiscal 2000 or any two consecutive fiscal years of

operation following fiscal 1999, then Owner may terminate this Agreement upon written notice to Hyatt of such termination, within ninety (90) days after the delivery of the year end Financial Statements pursuant to Section 7.4(a), which notice shall specify a date of termination, and Owner shall not be liable to Hyatt for any lost earnings resulting from such termination."

1.6 Amendment of Section 11.1. The following clause is hereby inserted at the beginning of the first sentence in Section 11.1:

"Notwithstanding the coupling of Hyatt's power of agency with an interest as a result of the limited partnership interest held by Hyatt in the Owner,"

2. Continuation of Management Agreement.

Subject to the foregoing provisions of this Amendment, each and all of the covenants, conditions and other provisions of the Management Agreement are hereby affirmed, and the Management Agreement shall continue in full force and effect in accordance with its terms.

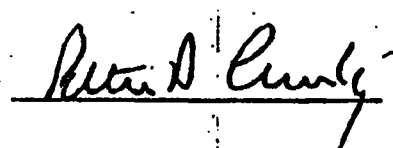
IN WITNESS WHEREOF, Owner and Hyatt have executed this Amendment as of the day and year first above set forth.

WILSON ARLINGTON COMPANY,
A CALIFORNIA LIMITED PARTNERSHIP

By: 396 FORDYCE CORPORATION,
a California corporation,
as General Partner

By: 
Douglas R. Ring
President

HYATT CORPORATION,
a Delaware corporation

By: 

ORIGINAL

AMENDMENT NO. 2 TO MANAGEMENT AGREEMENT

THIS AMENDMENT NO 2 TO MANAGEMENT AGREEMENT (this "Amendment"), is made as of the ____ day of July, 1997, by and between WILSON ARLINGTON COMPANY, a California limited partnership ("Owner"), and HYATT CORPORATION, a Delaware corporation ("Hyatt"), with reference to the following facts and objectives:

A. Owner, as assignee of The Prudential Insurance Company of America, and Hyatt are parties to a Management Agreement dated as of February 19, 1981 as amended by a Letter Agreement dated August 5, 1981, and Amendment No. 1 dated as of June 15, 1994 (the "Management Agreement"), pursuant to which Hyatt acting for the account of Owner, has operated and managed a certain hotel located in Arlington, Virginia commonly known as the Hyatt Arlington (the "Hotel").

B. Owner and Hyatt desire to amend the Management Agreement as hereinafter set forth (the "Amendment").

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Section 5.1(b)(i) of the Management Agreement is hereby amended by increasing the "applicable amount" for deposits to be made to the Reserve Account to three percent (3%) of Gross Revenues; such increase to be effective as of August 1, 1997.

2. All defined terms herein shall have the meaning ascribed to them in the Management Agreement.

3. Except as modified and amended herein, the Management Agreement is hereby ratified and affirmed, and shall remain in effect in accordance with its terms.

IN WITNESS WHEREOF, Owner and Hyatt have executed this Amendment as of the day and year first above set forth.

WILSON ARLINGTON COMPANY, a
California limited partnership

By DR4 Company, L.L.C., a
California limited liability
company


By its Manager, Ring-Miscikowski
Trust

By:


Douglas R. Ring, Trustee

HYATT CORPORATION,
a Delaware corporation

By:


Peter Connolly, Vice President



VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

WILSON ARLINGTON COMPANY,

Plaintiff,

v.

HYATT CORPORATION,

Defendant.

Case No. 08-1539

ORDER

THIS ACTION came before the Court upon the Plaintiff's notice of nonsuit, filed November 6, 2009, and

IT APPEARING TO THE COURT that Plaintiff has not previously taken a nonsuit, and that no counterclaim, cross claim or third party claim has been filed, it is therefore,

ORDERED that Plaintiff's Complaint is nonsuited pursuant to Virginia Code § 8.01-380.

ENTER. *November 6, 2009*

James G. Repey

Judge, Circuit Court of Arlington County

Dated: November __, 2009

WE ASK FOR THIS:

Stuart A. Raphael

Stuart A. Raphael (VSB No. 30380)
Sona Rewari (VSB No. 47327)
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7400
(703) 714-7410 (facsimile)
Counsel for Wilson Arlington Company

SEEN:

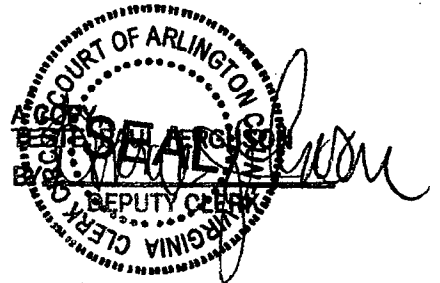
and objected to:
Donnie L. Kidd, Jr. by William D. Dolan, III

Donnie L. Kidd, Jr. (VSB No. 44241)
Christopher Wynn (VSB No. 75991)
SQUIRE, SANDERS & DEMPSEY LLP
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, DC 20004

Rodney R. Patula (*pro hac vice*)
SQUIRE, SANDERS & DEMPSEY LLP
One Maritime Plaza, Suite 300
San Francisco, California 94111

William D. Dolan, III (VSB No. 12455)
Michael W. Robinson (VSB No. 26522)
VENABLE LLP
8010 Towers Crescent Drive
Suite 300
Vienna, Virginia 22182
(703) 760-1684
(703) 821-8949 (facsimile)

Counsel for Hyatt Corporation



BLUEBIRDOnline.com (800) 477-0763

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

HYATT CORPORATION,

Plaintiff,

v.

WILSON ARLINGTON CORPORATION,

Defendant.

Case No. 07-161

WILSON ARLINGTON COMPANY,

Plaintiff,

v.

HYATT CORPORATION,

Defendant.

Case No. 08-1539

ORDER

THESE MATTERS came before the Court on April 16, 2009, following supplemental briefing by the parties, on Wilson Arlington's Motion for Sanctions and Other Relief, and in accordance with the Court's Order of September 26, 2008. Upon consideration of the parties' briefs and oral argument of counsel, and for the reasons stated on the record,

IT IS HEREBY ORDERED THAT: (1) the remainder of Wilson Arlington's Motion for Sanctions is GRANTED as follows:

- (1) Wilson Arlington is awarded ~~\$165,822.50~~ ^{\$100,000} in reasonable attorney's fees incurred in connection with its two motions to compel and motion for sanctions against Hyatt. This amount includes \$8,960 in attorney's fees for Wilson Arlington's first motion to compel against

~~Hyatt, \$26,892.50 in attorney's fees for the second motion to compel against Hyatt, and \$129,970 in attorney's fees for the motion for sanctions and other relief.~~ (SE) KAY

(2) Hyatt shall pay the full amount set forth in subparagraph (1) above within seven days of the date of this Order;

(3) Hyatt shall produce to Wilson Arlington *by June 1, 2009:* (SE) KAY

(a) all documents responsive to Wilson Arlington's First and Second Set of Requests for Production located in the electronic or hard-copy files of George Gudgeon, Anne Hanch, Jim Melvin, and Chris Elam;

(b) all communications and correspondence between Hyatt and Deloitte & Touche, or between Hyatt and PricewaterhouseCoopers (or its predecessor, Coopers & Lybrand), as requested in Request No. 2 of Wilson Arlington's First Set of Requests for Production;

(c) a chart that identifies by name, subject, contracting parties, and effective date, each National Contract, as that term is defined in Wilson Arlington's First Set of Requests for Production to Hyatt, that indicates whether such agreement has already been produced, and, for each such agreement that has not been produced, that details how Hyatt has searched for that agreement, including the files searched and search criteria and terms used.

(d) documents that show the ownership structure of Hyatt, including any changes thereto between January 1, 1980 and December 31, 2006, and documents that show the legal relationship between Hyatt, its owners, parents, subsidiaries, on the one hand, and any Related Party (as that term is defined in Wilson Arlington's First Set of Requests for Production) doing business with the Hotel between January 1, 1980 and December 31, 2006;

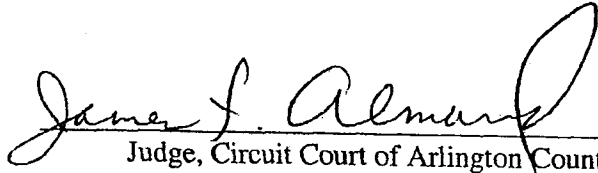
(e) a copy of any internal directive issued by Hyatt for the preservation of documents related to this litigation, including a list of the individuals or departments to which such directive was sent; and

(f) a certification from an officer of Hyatt that sets forth the names of the individuals whose documents were searched to respond to Wilson Arlington's document requests, the files that were searched for responsive documents, including whether such files were maintained electronically or in hard-copy format, and the search methods and terms, if any, used to locate responsive documents.

~~(4) Hyatt shall pay to Wilson Arlington a fine of \$1,000 per day until it has delivered all the items listed in subparagraph (3) above.~~ ^(SR) *pp*

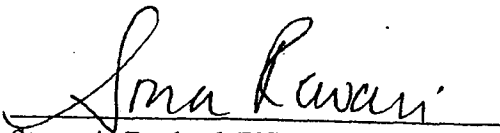
(5) The parties shall return before the Court on June 15, 2009, at 10 a.m. to address whether Hyatt has fully complied with this Order.

ENTER.


Judge, Circuit Court of Arlington County

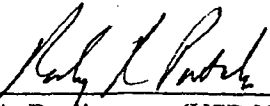
Dated: April 16, 2009

WE ASK FOR THIS:


Stuart A. Raphael (VSB No. 30380)
Sona Rewari (VSB No. 47327)
HUNTON & WILLIAMS LLP
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
(703) 714-7400
(703) 714-7410 (facsimile)

Counsel for Wilson Arlington Company

SEEN AND Object:



John A. Burlingame (VSB No. 32694)
Donnie L. Kidd, Jr. (VSB No. 44241)
Kevin M. Blair (VSB No. 72737)
SQUIRE, SANDERS & DEMPSEY LLP
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Washington, DC 20004

Rodney R. Patula (*pro hac vice*)
SQUIRE, SANDERS & DEMPSEY LLP
One Maritime Plaza, Suite 300
San Francisco, California 94111

Counsel for Hyatt Corporation